Calendar No. 282

99TH CONGRESS *1st Session*	SENATE	REPORT 99-132

IMMIGRATION REFORM AND CONTROL ACT OF 1985

REPORT

together with

MINORITY VIEWS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S. 1200, as amended

AUGUST 28, 1985.—Ordered to be printed

Filed under authority of the order of the Senate of August 1 (legislative day, July 16), 1985

U.S. GOVERNMENT PRINTING OFFICE

51-567 O WASHINGTON : 1985

S523-4

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky

JOSEPH R. BIDEN, JR., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

DENNIS W. SHEDD, *Chief Counsel and Staff Director*
DIANA L. WATERMAN, *General Counsel*
DEBORAH G. BERNSTEIN, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

ALAN K. SIMPSON, Wyoming, *Chairman*

CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama

EDWARD M. KENNEDY, Massachusetts
PAUL SIMON, Illinois

RICHARD W. DAY, *Chief Counsel and Staff Director*
CHARLES O. WOOD, *Special Counsel*
CARL W. HAMPE, *Counsel*
JERRY M. TINKER, *Minority Counsel*

CONTENTS

	Page
I. Purpose and summary	1
II. General statement	2
A. Introduction	2
B. The national interest	3
C. Current problems	4
D. The solution—S. 1200	7
(1) Title I—Control of illegal immigration	7
a. Reducing the incentive of employment	7
b. Enforcement and fees	13
c. Agricultural labor	13
(2) Title II—Legalization	15
(3) Title III—Other changes	16
(4) Title IV—Reports to Congress	17
(5) Title V—U.S.-Mexico Commission	18
III. Recent immigration studies and reform efforts	18
A. History, 92d-96th Congresses (1971-1980)	18
B. Ford administration proposals	20
C. Carter administration proposals	20
D. Select Commission on Immigration and Refugee Policy	21
E. Reagan administration proposals	23
F. 97th Congress (1981-1982)	24
G. 98th Congress (1983-1984)	25
IV. Committee proceedings	26
V. Section-by-section analysis	29
VI. Cost estimate	57
VII. Regulatory impact evaluation	68
VIII. Changes in existing law	68
Minority views of Mr. Kennedy	103
Minority views of Mr. Simon	107

Calendar No. 282

99TH CONGRESS
1st Session

SENATE

REPORT
99-132

IMMIGRATION REFORM AND CONTROL ACT OF 1985

AUGUST 28, 1985.—Ordered to be printed

Filed under authority of the order of the Senate of August 1 (legislative day, July 16), 1985

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1200, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 1200) to amend the Immigration and Nationality Act, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY

The Committee bill is intended to increase control over illegal immigration.

The primary incentive for illegal immigration is the availability of U.S. employment. In order to reduce this incentive, the bill makes unlawful the knowing employment, or the recruitment or referral for a fee, of illegal aliens; provides for a system to verify work eligibility; and establishes appropriate penalties for violations. In addition, the bill establishes new crimes for certain activities involving fraudulent documents and for bringing illegal aliens to the United States; states the sense of Congress that resources for conventional enforcement and immigration services should be increased; allows the imposition of fees for immigration services and for the use of Immigration and Naturalization Service border and other facilities; and prohibits adjustments of status by visa abusers.

51-567 O

S. 1200 also makes several changes in the system of legal immigration. Special immigration benefits are provided for four categories of individuals who have resided in the United States for many years: certain children of employees of international organizations, surviving spouses of deceased such employees, and retired such employees and their spouses. The colonial quota is increased from 600 to 3,000 visas per year. While no changes are made in the current immigrant preference system, the Committee strongly believes that changes should be considered after the provisions of this bill have been enacted into law.

The bill also amends certain provisions of the law relating to nonimmigrants. The H–2 temporary worker program is revised in order to assist agricultural employers in adjusting to the reduced availability of illegal foreign workers. In addition the bill establishes a 3-year transition program for employers of agricultural labor, and creates a commission to further study agricultural labor issues. A pilot visa waiver program is authorized for up to eight countries with low rates of visa denial, exclusion, and visa abuse.

The bill further provides that under certain circumstances illegal aliens who entered the United States prior to January 1, 1980, may obtain temporary legal resident status. Such aliens will have an opportunity to adjust to permanent status after 3 years if they have satisfied certain conditions, including the presentation of evidence that they have some knowledge of U.S. history, government, and the English language, or have enrolled in a program to acquire such knowledge. The legalization program will not begin until 3 years after enactment unless a presidentially appointed commission, whose members support the concept of legalization in the bill, finds that Federal programs to enforce the immigration laws are in place and are effective enough to prevent legalization from encouraging more illegal immigration. If such finding is made within 3 years after enactment, legalization will begin at the earlier time.

Finally, the bill requires certain reports from the President to Congress with respect to the employer sanctions and employment verification provisions, legal and illegal immigration, the legalization program, and the visa waiver program. A report is also required from the Comptroller General of the United States with respect to the implementation of employer sanctions provisions, including whether a pattern of discrimination on the basis of national origin has resulted against citizens or aliens authorized to work in the United States.

II. GENERAL STATEMENT

A. Introduction

No other country in the world attracts potential migrants as strongly as the United States of America. No other country approaches the United States in the number of legal immigrants accepted or refugees permanently resettled. The Committee believes that most Americans are proud of both the reputation and the history of this country as a land of opportunity and refuge. We believe that this reputation and this history have generally had a positive effect on America.

However, current U.S. immigration policy is no longer adequate to deal with modern conditions, including the growing immigration pressure on the United States. Immigration to the United States is "out of control" and it is perceived that way at all levels of government and by the American people—indeed by people all over the world.

The Committee believes that reform is imperative. This does not mean the United States must isolate itself from the rest of the world. Immigration can continue to serve the national interest, but only if the law is reasonably amended to be appropriate for contemporary conditions, and only if the law can be enforced. This will in no way be inconsistent with American tradition. Immigration to the United States has been limited in various ways for more than a century and has been subject to forms of numerical limitation for over 60 years.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

In an earlier time, the Nation could welcome millions of newcomers, many of whom brought few skills, but did bring a willingness to work hard. In a smaller America with a simpler, labor-intensive economy and a labor shortage, that was often quite enough—that, plus their intense drive to become Americans.

Immigrants can still greatly benefit America, but they should be limited to an appropriate number and selected within that number on the basis of immediate family reunification and skills which would truly serve the interest of a highly developed nation. The major purpose of this bill is to make progress toward the day when the American people can be assured that the limitations and selection criteria contained in the immigration statutes are actually implemented through adequate enforcement.

B. The National Interest

The Committee believes that the paramount obligation of any nation's government, indeed the very reason for its existence and the justification for its power, is to promote the national interest—the long-term welfare of the majority of its citizens and their descendants.

Consequently, we believe that the formulation of U.S. immigration policy must involve a judgment of what would promote the interests of American citizens—as they are at the present time and as they and their descendants are likely to be in the foreseeable future. An immigration policy which would be detrimental to the long-term well-being of the American people should not be adopted.

We certainly do not mean to suggest that charity and compassion should not play a role in U.S. immigration policy. Even if a particular charitable policy would not promote the national interest, as long as it would not be harmful to that interest and was supported by a majority of the American people, then it should of course be adopted.

Because the well-being of individuals is affected by both economic and noneconomic circumstances, an immigration policy which serves the national interest should be based on an analysis of both the economic and noneconomic impacts of immigration. Economic variables include unemployment, wages, working conditions, productivity and per capita gross national product (GNP). Noneconomic matters include population size, other demographic phenomena, and such cultural elements as values, customs, institutions, and degree of unity or of tension between subcultures.

There is an additional component of the national interest which a realistic analysis must not ignore. This is related to the ability of human beings to experience change without discomfort and it exists regardless of whether any objectively adverse impacts occur. Although the desire of immigrants from other lands to change their lives totally by coming to the United States is obviously greater than their reluctance to leave their homes, the ability of the American people to welcome aliens into their day-to-day life experiences has limits. These limits depend in part on the degree and kind of change which will be caused in their lives. We see evidence that if the newcomers to a community do not excessively disrupt or change the attributes of the community which make it familiar to its residents and uniquely their "home" (as compared with foreign areas, which they may respect highly but are not "home" to them), then the newcomers may well be welcome, especially if they make positive contributions to the community's economic and general well-being. On the other hand, it is seen that if the newcomers remain "foreign," they may not be welcome, especially if they seek to carve out separate enclaves to embrace only their own language and culture and if their numbers and the areas of the community which they directly affect are great. Perhaps this should not be so in the "ideal" world, but it is real.

C. Current Problems

In the last 9 years, total legal permanent admission to the United States increased from a little over 450,000 in 1976 to 510,000 in 1984. A level of 800,000 was reached in 1980 (if the 145,000 Cubans and Haitians entering that year are counted). As recently as 1965, the total was under 300,000.

During the same 9-year period, the category of "immediate relatives" of U.S. citizens grew 56 percent, from 114,000 to 177,000. Under present law there are no numerical limits on this type of family reunification. In this same period, refugee admissions have ranged from 5,000 in 1977 to a high of over 200,000 in 1980 (excluding the Cubans and Haitains entering that year), to 68,000 in 1984. It should be noted that the United States continues to take more legal immigrants and refugees for permanent resettlement than the rest of the world combined. It is because of these two categories, "immediate relatives" and refugees, neither of which is subject to firm annual numerical limits, that immigration to the United States has increased to such a large extent.

The level of refugee admissions is set by the President after consultation with this Committee and with the Committee on the Judiciary of the House of Representatives. As a result of the maturing

of the consultation process which has occurred in the period since the enactment of the Refugee Act of 1980, the Committee believes that the process provides an appropriate degree of control over this category of entrants not subject to firm statutory limits.

In addition, hundreds of thousands of illegal immigrants now enter the United States every year. Some estimate the net annual inflow at 500,000. The present inflow appears to have become substantially higher in recent years. At least some indication of this can be found in the dramatically increased number of apprehensions. In 1965 the number was just over 100,000. By 1972 it had reached one-half million. Today it is over 1 million.

The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy used the figure of 3.5 to 6 million as the best guess for 1978. Whatever the number 7 years ago, there are surely many more now.

Immigration—legal plus illegal—now appears to be accounting for 30 to 50 percent of our annual population growth of about 2 million.

At the present time, net immigration—legal plus illegal—probably exceeds 750,000 per year. A net annual immigration of 750,000 would lead to a U.S. population in 100 years of 300 million, if it is assumed that the fertility rate of the existing population remains at its present low level—which seems unlikely—and the fertility rate of the new immigrants immediately declines to that of the present population as a whole—which is even less likely, given the high fertility rates of the less developed countries from which most of the immigrants come. One-third of this 300 million would consist of immigrants arriving after 1980 and their descendants.

Indeed, these figures actually underestimate the impact of immigration. Since it is concentrated in only a few regions of the country, the impact on these regions is of much greater significance than the overall figure suggests. For example, under the same assumptions and assuming continuance of existing settlement patterns, the population of California would double by 2080. Over one-half of that State's population would consist of post-1980 immigrants and their descendants.

The problems which may be caused by excessive population growth are well known and we shall not discuss them here.

Not only is there a very large number of legal and illegal immigrants, but only a small fraction of them are individually selected on the basis of labor market skills which have been determined to benefit the Nation as a whole rather than primarily the interests of the immigrants themselves or their U.S. relatives.

As a result of this and of the fact that the present labor certification process may be of limited effectiveness, we believe there have been adverse job impacts, especially on low-income, low-skilled Americans, who are the most likely to face direct competition, even though we also preceive a degree of short-term economic advantage from the use of "cheap" labor. Such adverse impacts include both unemployment and less favorable wages and working conditions. Not only does this cause economic harm to the directly affected Americans and their families, and in many cases a burden on the taxpayers, but it may also affect society as a whole in the form of social problems associated with unemployment and poverty.

Opponents of more effective measures to enforce the immigration laws have claimed that Americans will not take certain "menial" jobs. The Committee believes that this claim has been overstated.

First, many illegal aliens are working in nonmenial jobs which unemployed, underemployed, or less well-paid Americans would clearly take. This will be increasingly true if Federal and State support for various public assistance programs continue to be reduced.

Second, there is evidence that the recruitment policies of firms which rely on illegal aliens for "menial" jobs effectively exclude U.S. workers through limiting access to information about job vacancies. If no information is available concerning vacancies in such jobs, it is unlikely that U.S. workers will apply for them.

Third, many other jobs, which are not now attractive to a sufficient number of qualified Americans, could be made so if employers were to offer higher wages, better working conditions, or a reasonable training program. If a job cannot be filled by Americans at an affordable cost, then if possible it should be mechanized through additional capital investment and more advanced technology. Alternatively, a business might relocate some labor-intensive production overseas or the product or service might be imported from a foreign firm or simply forgone.

The Committee believes that bringing in foreign labor should be a very last resort. Even when no direct displacement of Americans occurs and even when there are short-term economic benefits to a majority of the current population, such action will frequently reduce this country's average productivity and per capita gross national product (GNP), a commonly used measure of a nation's prosperity.

In any case, if it is concluded that the use of foreign labor is beneficial under certain circumstances, then the law should allow this use under the appropriate limitations and conditions. Obviously, however, if the necessary limitations and conditions cannot be enforced, then no beneficial results can be assured.

Although population and direct economic impacts are of great significance, we think most people would agree that the national interest of the American people also includes certain even more important and fundamental aspects, such as the preservation of freedom, personal safety, and political stability—as well as the public cultural qualities and the political institutions which are their foundation.

No one seeking to enter the United States is now barred because of race, color, or religion, as has sometimes happened in the past. This Nation does have a right, however, to expect that anyone wishing to obtain the freedom and opportunity which have been created by the American people will apply lawfully for entry and that those who are selected to immigrate will seek to assimilate into American society, adopting and supporting the public values, beliefs, and customs underlying America's success, and not seek to recreate their homeland here in America.

In the past several years over 80 percent of the new legal immigrants joining American citizens and permanent residents in the United States have come from Latin America, Asia, and the Caribbean area. With respect to illegal immigrants, it is estimated that

Mexico is the source of at least 50–60 percent of the total, other parts of Latin America 10–15 percent, and the Caribbean area 5–10 percent.

To a large extent, the effect of such patterns will depend upon the degree and the pace at which immigrants and their descendants follow the historical pattern of earlier immigrant groups in assimilating into American society and culture.

A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. There is considerable variation in the naturalization rates of immigrants from different countries of origin. A sample of those granted permanent resident status in 1971 was examined by the staff of the Select Commission on Immigration and Refugee Policy. Of those of Mexican origin who remained in the United States at the end of 7 years, only 5 percent had naturalized. For the entire region of South America the rate was 24.6 percent, for Europe 42.6 percent, for Asia 80.3 percent (excluding China, India, Korea, and the Philippines, whose rates were, respectively, 73.8 percent, 67.8 percent, 80.9 percent, and 67.6 percent). Interestingly, the naturalization rate of immigrants from Canada, who in most cases already share our language and much of our way of life, was 3.4 percent.

If immigration is continued at a high level, yet a substantial portion of these new persons and their descendants do not assimilate into the society, they have the potential to create in America a measure of the same social, political, and economic problems which exist in the countries from which they have chosen to depart. Furthermore, if language and cultural separatism rise above a certain level, the unity and political stability of the Nation will—in time—be seriously diminished. Pluralism, within a united American nation, has been the single greatest strength of this country. This unity comes from a common language and a core public culture of certain shared values, beliefs, and customs which make us distinctly "Americans."

D. The Solution—S. 1200

(1) TITLE I—CONTROL OF ILLEGAL IMMIGRATION

Most importantly, S. 1200 contains provisions intended to reduce the problem of illegal immigration.

Obviously, the potential benefits and protections sought under even the most carefully designed statutory standards for determining who may enter the United States, as well as for how long and under what conditions they may remain, will not be available in practice if those statutory standards cannot be enforced.

a. Reducing the incentive of employment

There are only two types of solutions available to the problem of illegal immigration.

The first is direct enforcement:

(A) To physically prevent illegal entry into the United States, for example through border control, fences, and interdiction, and

(B) To find and deport those who are successful in entering illegally, as well as those who enter legally and then violate the terms of their visa.

The second type of solution involves reducing the incentives to enter.

All objective, comprehensive studies of the problem of illegal immigration, including those by the Ford, Carter, and Reagan administrations, as well as the Select Commission on Immigration and Refugee Policy, have concluded that adequate enforcement of U.S. immigration laws cannot be achieved by direct enforcement alone. The Committee agrees.

Reliance on direct enforcement alone would require massive increases in enforcement in the interior—in both neighborhoods and work places—as well as at the border. This would be more costly and intrusive, as well as less effective, than a program which combines direct enforcement at reasonable levels with a reduction in the incentives to enter the United States.

At the present time there is a substantial disparity in job opportunity between the United States and Third World countries—a disparity which may well continue or even widen as a result of political and social conditions in those countries. Such disparity exists not only in rates of unemployment, but also in wages and working conditions. Even if the unemployment rates were reduced, a difficult task in light of the high birth rates in these countries, the disparity in wages and working conditions would remain.

As long as greater job opportunities are available to foreign nationals who succeed in physically entering this country, intense illegal immigration pressure on the United States will continue. This pressue will decline only if the availability of U.S. employment is eliminated, or the disparity in wages and working conditions is reduced, through improvement in the Third World or deterioration in the United States.

The United States should, of course, assist Third World development, but the achievement of substantially higher living standards there is a propsect only for the long run, and probably depends more than anything else on political and cultural change not in the control of the United States. Furthermore, in the short run, Third World development may actually increase migration to the United States. Since deterioration in the United States is certainly not an attractive resolution, only one approach remains: to prohibit the knowing employment of illegal aliens.

S. 1200 provides for penalties against employers who knowingly employ illegal aliens and also against persons who knowingly and for a fee or other consideration recruit or refer for employment such illegal aliens.

In order to protect both the persons subject to penalties and the members of minority groups legally in this country, the bill provides a system to verify that employees and potential employees are eligible to work in the United States. A formal, effective verification system combined with an affirmative defense for those who in good faith follow the proper procedure is imperative. Otherwise, the system cannot both be effective and avoid discrimination. If employers, recruiters, and referrers are given no protection, they will feel insecure and seek to avoid penalties by avoiding persons

who they suspect might be illegal aliens, in other words, those who "look or sound foreign" to them. If, on the other hand, they are given protection by utilizing a verification system which is easily defeated, then very little screening is likely to occur, even if the vast majority of employers, recruiters, and referrers seek to obey the law, which we believe will be the case.

Concern has been expressed that the employer sanctions provisions of S. 1200 will cause some employers to discriminate on the basis of natural origin against certain U.S. citizens or aliens authorized to work in the United States. The Committee does not believe that such discrimination will occur. No convincing evidence or argument has been presented that it will occur, and the evidence that is available to the Committee indicates that it will not.

An innocent employer is protected by the verification system and will have no reason to discriminate. This will be more fully explained below. An employer who wants to avoid hiring certain persons because of their race or national origin could continue to try to do so, but he would be subject to a suit under title VII of the Civil Rights Act of 1964. The employer sanctions law would provide no protection for such an employer. Such an employer might allege that his decision not to hire was motivated by a fear of employer sanctions. If, however, the plaintiff were to show by a preponderance of the evidence that the employer did not actually have such fear, then such allegation would not have helped the defendant's case. The most likely form of such evidence would be a sworn statement that documents had been presented to the employer showing that the applicant was authorized to be so employed, along with the documentary evidence itself (which would of course be in the possession of the applicant). If the documents appeared on their face to be genuine and to belong to the applicant, and if the employer were unable to present equally convincing evidence that such documents had not been presented or that despite the documents the employer had reasonable grounds for believing the applicant to be an alien ineligible to be so employed, then the judge or jury would conclude that the employer's reason for deciding against hiring the applicant was something other than a fear of employer sanctions.

The best evidence that is available—that derived from the experience of several European countries, including France, which is a multiracial society—shows that increased discrimination on the basis of race, ethnicity, or national origin does not result from employer sanctions.

Existing documents will be used for the verification system. It will involve examination of either—

(a) A U.S. passport, certificate of citizenship, certificate of naturalization, unexpired foreign passport with appropriate, unexpired endorsements authorizing U.S. employment, or certain forms of resident alien card or other alien representation card; or

(b) Two other documents, one to verify that the applicant is presenting his true identity, such as State drivers license, or State identification card, and one to verify that he is authorized to work, such as certain forms of the social security account number card, or certificate of birth in the United States.

The user of the system will then sign under penalty of perjury a statement that the required documents have been examined, and obtain the signature of the prospective employee on a written statement that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work. In many cases existing application forms or something very similar could be used. In addition, the employer will be responsible for retaining these signed forms for 3 years or until 1 year after the employment ends, whichever is later. The Committee emphasizes that the user of the system will not be responsible for the genuineness of the documents, only that such documents reasonably appear on their face to be genuine.

The bill requires the executive branch to monitor and evaluate the verification system in order to make it more secure against fraudulent use. To the extent that existing documents are found not to be secure, the President is directed to implement such changes as are necessary to make the system secure in determining employment eligibility. For example, if an improved system were based on a card or other document or on a verifying telephone call to a government office, it would have to be resistant to use by imposters. If the system were to utilize a card or other document, such document would have to be resistant to counterfeiting and tampering. In an improved system, any underlying nonsecure documents, such as current forms of the birth certificate, would be examined by immigration experts. Users would utilize only the more secure system based upon them.

The President is required to give notice to Congress before implementing an improved system. If a minor change is involved (such as improvements in the current Social Security card), 60 days' notice is required. If a major change is involved (such as the creation of a new card or a telephone verification system), 2 years' notice is required, and funds must be specifically provided by Congress before the change is implemented. The President is authorized to undertake demonstration projects consistent with the statutory requirements for any new system. The project may not, however, last longer than 3 years.

Use of the verification system will not be mandatory. However, any employer who uses the system for all applicants will have an affirmative defense against the penalties. Furthermore, if an employer of four or more employees does not use the system, and an illegal alien is found in his employ, the employer will be presumed to have knowingly hired the alien. Such employer could rebut this presumption by "clear and convincing evidence."

It has been claimed that a new verification system would be too costly and that it would pose a threat to privacy and civil liberties.

On the cost issue the Committee believes that several points should be made. First, there are also tremendous costs in inadequate enforcement. The Congressional Budget Office has estimated that each unemployed person in the United States receives an average of about $7,000 per year in unemployment and welfare benefits. If the number of illegal aliens in the United States today is estimated at 6 million and if even 1 percent hold jobs which unemployed Americans would take, then the savings would be $420 million per year; if the displacement is 2 percent, the figure would

be $840 million per year, etc. Actual displacement is probably substantially higher.

The Social Security Administration recently estimated that the cost of replacing all Social Security cards with a tamper- and counterfeit-resistant version would be $108 million per year for 10 years. The actual cost of this option should be lower since replacement of all cards would not be necessary. The Department of Labor has estimated the cost of a verification system utilizing telephone calls to a government data bank as averaging $333 million per year for the first 5 years and about $200 million per year thereafter. Doubling the number of interior Immigration and Naturalization Service investigators would add $25-$30 million per year. Thus, a new system to verify work eligibility may well not exceed in cost the amount directly saved as a result of reduced public assistance alone, not even considering the value of the other benefits of reducing illegal immigration. Furthermore, a small fee could be utilized to raise the necessary revenue.

With respect to civil liberties, the Committee has given considerable thought to the question of how, for example, changing the form of the Social Security card, which is one of the alternatives that is available, could pose risks to liberty.

That question was asked of many witnesses at the hearings of the Subcommittee on Immigration and Refugee Policy—from the American Civil Liberties Union to Arthur Flemming of the U.S. Commission on Civil Rights. No one has yet given a satisfactory answer. Others never known for their neglect of civil and human liberties agree with us, including Father Ted Hesburgh, former Chairman of the Select Commission on Immigration and Refugee Policy and of the U.S. Commission on Civil Rights, as well as the editorial writers of the New York Times, Washington Post, Los Angeles Times, Boston Globe, and other major newspapers across the country, and former Attorneys General Elliot Richardson and Benjamin Civiletti.

We wish to emphasize that no likely future verification system would require personal data that is not already available in other government data banks. Thus, an improved verification system would either utilize a preexisting data bank or a new one with less information.

Furthermore, the bill contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of government abuse in connection with any improved verification system:

(1) Personal information utilized by the system would not lawfully be available to government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility.

(2) A withholding of verification would not be lawful except on the basis that the employee or prospective employee had failed to show that he was a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien authorized to be so employed by the immigration law or the Attorney General.

(3) The system would not lawfully be available for law enforcement except to enforce the immigration laws or several

statutory provisions relating to false or fraudulent statements or documents.

(4) If the system required individuals to present a card or other document, then such document could not lawfully be required to be presented for any purpose other than verification of employment eligibility or the enforcement of several statutory provisions relating to false or fraudulent statements or documents, and could not lawfully be required to be carried on the person.

The Committee is most emphatically not requiring or permitting the development of an "internal passport" or "national I.D. card." The 2-year notice to Congress requirement adds an additional safeguard.

In addition to the protective provisions in the bill, there are far stronger protections already in place. The most important safeguard of the civil liberties of Americans is not "the law," which can always be changed, but rather the public cultural elements which underlie the law, including the values and traditions of our form of government, which are part of the American character. As long as the American people themselves do not come to accept and adopt forms of government like those of nations more willing to tolerate repression in their political system and leaders, then no danger exists. There is no "slippery slope" toward loss of liberties, only a long staircase where each step downward must be tolerated by the American people and by their leaders. The Committee does not believe that the system being proposed, or the improved systems which the safeguards would permit, would involve any form of a step toward loss of civil liberties.

With respect to the penalties for knowing employment or knowing recruitment or referral for employment, the bill's provisions are, in the view of the Committee, quite reasonable. Indeed, no penalty at all will be imposed during the first 6 months after enactment, nor will any violation during that period be counted for purposes of determining the level of penalty for later violations. Even in the second 6 months after enactment, the initial violation will be subject only to a warning and will not be counted for the purpose of determining the level of penalty later. For this first year of enactment the bill directs various government agencies to cooperate in disseminating forms and information to employers and other Americans, and otherwise educating the public about the requirements of the program.

Under the normal penalty structure, which becomes effective 12 months after enactment, the first assessment of penalties will include a cease-and-desist order issued by an immigration judge and a fine of between $100 and $2,000 per illegal alien. This will be a civil, not a criminal, penalty. For a violation occurring after at least one prior penalty has been assessed and opportunity for a hearing has been provided, a civil penalty of between $2,000 and $5,000 per illegal alien may be imposed, as well as the cease-and-desist order.

For a "pattern or practice" of violations, a fine of between $3,000 and $10,000 per illegal alien is available. In addition, the Attorney General is instructed to seek compliance with the cease-and-desist orders in Federal district court. Failure to so comply could result in

"contempt of court" penalties—fines and imprisonment—for the offending employer.

If there is a pattern or practice of violations subsequent to the imposition of a penalty for a prior pattern or practice of violations, a criminal penalty may be imposed—a fine of no more than $3,000 per alien, a term of imprisonment of no more than 6 months for the entire pattern or practice, or both.

Stiff criminal penalties are provided for the fraudulent production, sale, distribution, or use of any document which may be presented to satisfy a requirement of the immigration laws.

b. Enforcement and fees

S. 1200 states the sense of Congress that there are two essential elements in the program of immigration control established by the bill:

(1) An increase in border patrol and other inspection and enforcement activities of the INS and other appropriate Federal agencies; and

(2) An increase in the examinations and service activities of the INS and other agencies.

The bill authorizes $840 million in fiscal year 1987 and $830 million in fiscal year 1988 for the INS. This includes approximately $125 million per year for the 2 years for administration of the legalization program. The authorization level of INS for fiscal year 1985 is $584 million.

The bill also authorizes additional sums for enforcement activities in connection with the bill by the Wage and Hour Division and the Office of Federal Contract Compliance Programs of the Department of Labor.

In addition, S. 1200 provides authority to the Attorney General, in consultation with the Secretary of State, to impose fees for use of border and other INS facilities and services in an amount commensurate with cost.

The bill also creates a new criminal offense for bringing an alien to the United States with knowledge or in reckless disregard of the fact that the alien has not received *prior* official authorization to enter. No intent to smuggle is required.

c. Agricultural labor

The bill amends the H-2 temporary worker program to establish a special procedure for seasonal workers in agriculture:

Employers may not be required by the Secretary of Labor to apply for a "labor certification" more than 65 days in advance of need;

The application must show—

(A) That there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the work required; and

(B) That employment of the requested alien workers will not adversely affect the wages and working conditions of U.S. workers similarly employed.

If the Secretary of Labor does not notify the employer within 14 days of the filing of the application that the application does not

meet the requirements, then it shall be considered to have met such requirements.

The Secretary of Labor is directed to make the certification at least 20 days in advance of need if requirements for the certification have been complied with and the employer does not have alternative employees.

Special, expedited procedures will be available to agricultural employers in the following instances:

(1) Certification is denied;

(2) U.S. workers appear to perform agricultural labor, but are not qualified;

(3) U.S. workers are referred to agricultural employers, but do not show up on the day of need; and

(4) Unforeseen circumstances create a critical need for agricultural labor.

The bill provides that all regulations implementing the program must be approved by the Attorney General after consultation with the Secretary of Labor and Secretary of Agriculture.

The Secretary of Labor is authorized to monitor and enforce terms and conditions of the program. There is $10 million authorized for such monitoring and enforcement, and for the recruitment of U.S. workers.

A 3-year transition program is made available to agricultural employers for the purpose of enabling them to phase out their illegal labor and phase in legal workers. An employer will be allowed to use 100 percent of his prior alien work force in the first year, 67 percent in the second year, and 33 percent in the third year. Domestic workers or lawful temporary agricultural workers must be used thereafter.

In addition, a 12-member commission on agricultural worker programs is created to further examine the many issues surrounding temporary workers. Members will be appointed by the House, Senate, Departments of Labor and Agriculture, and the Attorney General. The Commission is required to report within 2½ years after enactment with specific legislative recommendations.

The Committee rejected proposals to adopt a massive new temporary or "guestworker" program. Such a program would create significant dangers, including adverse impacts on U.S. workers, especially if the temporary workers were not limited to the particular job or job category where they were allegedly needed.

Many of the temporary workers could choose to stay permanently, as they have in Europe, where significant social problems resulted, and where there is now widespread doubt that the guestworker program had been a beneficial idea. Permanent stays are especially likely if the workers may bring in their family, if they have U.S. citizen children, if they are not restricted to a particular job or job category, or if they are authorized to stay for long periods in the United States. Such long periods of stay increase ties to the United States, and also the likelihood that the workers will bring in their family even if it is illegal, or, if they have no family, that they will start a family in the United States.

To the extent that temporary workers believe that they will be returning to their home country, they will tend not to learn English and otherwise integrate into American life. They will tend to

form foreign enclaves, with associated social problems, and may even delay the integration of lawful permanent residents from the same country of origin.

(2) TITLE II—LEGALIZATION

The United States has become home for millions of illegal aliens, a large number of whom have been here for many years. The Committee strongly believes that those with the deepest roots should be allowed to stay, but also that no program to legalize these individuals should be adopted which would encourage new waves of illegal immigrants. As stated by the Select Commission on Immigration and Refugee Policy:

> Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to *any* program that could precipitate such movement. [Emphasis in the original.]

If legalization occurs before more effective enforcement has been achieved, the illegal population will immediately begin to grow again. This will create pressure for additional legalizations. Periodic legalizations would in effect be a repeal of U.S. immigration law. Furthermore, legalization in the absence of more effective enforcement is likely to *increase* the illegal flow by encouraging illegal entries in anticipation of further legalizations.

Because of these risks and because of significant public and congressional opposition to prior legalization proposals, the Committee believes that a legalization program should not go into effect for 3 years unless a presidentially appointed legalization commission determines that enforcement has become effective enough to prevent legalization from encouraging more illegal immigration.

In order to insure that this statutory requirement is not interpreted by an unsympathetic legalization commission in a way which unduly delays legalization, S. 1200 requires that members of the commission "support the concept of legalization in section 202." The details of the selection of the commission are explained below in the section-by-section analysis.

The bill provides for the legalization, once the program begins, of two categories of illegal aliens who have been physically present in the United States since enactment and are otherwise admissible:

(1) Illegal aliens who arrived in the United States before January 1, 1980, and have continuously resided in the United States in an unlawful status since that date; and

(2) "Special Cuban or Haitian entrants" (defined in section 202(a)(2)(D) of the bill) who have continuously resided in the United States since January 1, 1981.

Such aliens will qualify for temporary resident status. An alien in either group may adjust to permanent status after 3 years if the alien has or is acquiring the understanding of U.S. history, government, and the English language required for naturalization.

Federally funded public assistance will not be available to those granted the temporary status for 6 years (including the initial several years after they have received permanent resident status), pro-

vided, however, that certain Cuban and Haitian nationals who are covered by the legalization will continue to qualify for existing special benefits.

The bill provides for Federal payment to States of up to $600 million per year for 3 years, in the form of a capped entitlement program, for the purpose of reimbursing them for the cost of public assistance expended as a result of the legalization program and for the cost of incarcerating certain illegal aliens convicted of a felony.

Persons convicted of certain crimes, Nazis and other persons who have persecuted others, Communists, anarchists, saboteurs, and those seeking to overthrow the government, and persons likely to become public charges, will be excluded from each category of legalization. Most other classes of excludable aliens will also not qualify, unless a waiver is obtained. For further details see the section-by-section analysis relating to section 202.

We seek two major goals through legalization:

The first is to avoid wasteful use of the Immigration and Naturalization Service's limited enforcement resources. The United States is unlikely to obtain as much enforcement for its dollar if the Immigration and Naturalization Service attempts to locate and deport those who have become well settled in this country, rather than to prevent new illegal entry or visa abuse.

The second is to eliminate the illegal subclass now present in our society. Not only does their illegal status and resulting weak bargaining position cause these people to depress U.S. wages and working conditions, but it also hinders their full assimilation and, through them, that of legal residents from the same country of origin. Thus they remain a fearful and clearly exploitable group within the U.S. society.

It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning rights by virtue of the legalization. They will be required to "wait in line" in the same manner as immediate family members of other new resident aliens.

The Committee reiterates that legalization will be a "one-time only" program to address a problem resulting from the large-scale illegal immigration of the past. Illegal immigration on the same scale should be prevented from occurring in the future by the employer sanctions and increased enforcement provisions of the bill.

(3) TITLE III—OTHER CHANGES

The annual legal immigrant quota for dependent colonies is increased from 600 to 3,000. This will help reduce the substantial backlog of approved petitions for preference status held by persons born in Hong Kong.

The bill authorizes the Attorney General and the Secretary of State jointly to establish a 3-year pilot visa waiver program subsequent to the implementation of an automated nonimmigrant entry and exit control system. Under the program the requirement of a visitor's visa would be waived for the nationals of up to eight countries selected from those which extend or agree to extend reciprocal privileges to U.S. citizens and for whose nationals the rate of visa denial, exclusion, and visa abuse is very low. In order to qualify, such persons would be required to have a round trip, nonre-

fundable, nontransferable transportation ticket. This change would allow the Secretary of State to transfer resources to consular offices where the need to screen visitors is greater. Furthermore, the beneficial entry of desirable business and tourist visitors would be facilitated.

Finally, the bill provides special immigration benefits to certain holders of the G-iv visa if they have resided in the United States for many years, specifically certain retired employees of international organizations, such as the United Nations and the World Bank, and their spouses, surviving spouses of deceased employees of such organizations, and children of employees of such organizations.

(4) TITLE IV—REPORTS TO CONGRESS

The President is required to report to the Congress on:

(1) The employer sanctions provisions, including an analysis of the verification system and of the impact of such provisions on illegal immigration and on U.S. workers.

(2) Legalization.

(3) Legal immigration.

(4) Illegal immigration.

In addition the Attorney General and Secretary of State are directed jointly to monitor the visa waiver program and report to the Congress within 2 years of the beginning of the program.

The Attorney General is also required to transmit a report to Congress on the equipment and personnel resources which would improve the service and enforcement capabilities of the INS.

Finally, the Comptroller General is required to report to the Congress annually for 5 years on the implementation of the employer sanctions provisions, on whether such provisions have resulted in any pattern of discrimination against eligible workers seeking employment, and on whether an unnecessary regulatory burden has been created for employers.

The Attorney General, jointly with the Chairman of the Equal Employment Opportunity Commission and the Chairman of the Commission on Civil Rights, is required to establish a task force to review the reports of the Comptroller General. If a report of the Comptroller General states that a pattern of discrimination has resulted from employer sanctions, then the task force is directed to make specific remedial legislative proposals to Congress, taking into account any recommendations in such report. The Judiciary Committees of the House and Senate are required to hold hearings on any such proposals within 60 days.

The Committee emphasizes that the Commission on Civil Rights has full authority under current law to study employment discrimination based on race or national origin, to collect and evaluate reports on such discrimination, and to report to the Congress on any such discrimination.

In addition to the reports to Congress required in title IV, the bill provides, as indicated above, that a report must be submitted by the Commission on Temporary Agricultural Worker programs within 2½ years of enactment.

The Committee encourages State and local governments, and other interested public and private sector organizations, to form regional and local implementation task forces. These task forces could facilitate fair and effective implementation of this act by:

(1) Reviewing and commenting on proposed regulations and procedures;

(2) Monitoring and evaluating the implementation of the act as it proceeds; and

(3) Recommending necessary actions to the Federal implementing agencies.

(5) TITLE V—U.S.-MEXICO COMMISSION

A 12-member commission is created to study how the United States and Mexico can work together to improve the economies of the two countries. The commission is required to report to Congress within 180 days. After submitting its report the commission will terminate.

III. RECENT IMMIGRATION STUDIES AND REFORM EFFORTS

The Immigration Reform and Control Act of 1985 represents the most comprehensive immigration reform effort in the United States in 20 years. The most recent complete revision of the Immigration and Nationality Act occurred in 1952. It is popularly known as the McCarran-Walter Act. The 1952 statute has been modified through the years by a series of amendments, most notably those of 1965 and 1976. These amendments provided primarily for reform of the system for admitting legal immigrants to this country.

While the amendments to the Immigration and Nationality Act ("INA") in the Immigration Reform and Control Act of 1985 would make a few changes in the legal immigration system, the major portion of the legislation is directed toward improving control of illegal immigration to the United States. During the past decade, the principles embodied in these provisions have been the subject of substantial study by the executive branch, as well as by the Congress.

The reports and legislative activity generated during this period have focused on the basic components of the immigration reform package of S. 1200: employer sanctions, legalization, and increased enforcement.

A. History, 92d-96th Congresses (1971-1980)

In 1971, during the 92d Congress, the House Judiciary Subcommittee charged with immigration matters and chaired by Representative Peter W. Rodino, Jr., initiated a lengthy series of hearings pertaining to the control of illegal aliens. Mr. Rodino's subcommittee reported in 1975, that:

> The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor

and the economy, and to assure the orderly entry of immigrants into this country.[1]

The legislation resulting from these hearings consisted of two bills which provided for the imposition of graduated administrative, civil, and criminal penalties on employers who knowingly employed illegal aliens. The House Judiciary Committee explained its choice of employer sanctions as the principal means of curbing illegal immigration as follows:

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[2]

The House Judiciary Committee's employer sanctions legislation was endorsed by both the Nixon and Ford administrations and passed the House of Representatives twice, during the 92d Congress (H.R. 16188) and the 93d Congress (H.R. 982). No Senate action on these or similar bills was taken in either Congress.

During the 93d Congress a related measure was passed by both Houses and signed into law by the President. This law (Public Law 93-518) amended the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties for certain farm labor contractors who knowingly hire illegal workers.

During the 94th Congress an identical bill to H.R. 982 was introduced in the House and additional hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. These hearings resulted in a new version of the bill, H.R. 8713, which included, in addition to employer sanctions, a legalization provision for those illegal immigrants who had resided in the United States since July 1, 1968, and a provision intended to prevent discrimination against citizens and legal aliens on the basis of national origin. This bill was reported out of the full Judiciary Committee in September 1975, but received no further action.

During the 95th Congress a similar bill, H.R. 1663, was introduced by Representative Joshua Eilberg, chairman of the House Judiciary Committee's Subcommittee on Immigration, Citizenship, and International Law, but received no further action.

The principal legislative activity on this issue in the Senate during the 94th Congress focused on S. 3074, an omnibus reform

---

[1] H. Rept. 94-506, 94th Congress, 1st session, Sept. 24, 1975, p. 5.
[2] Ibid., p. 6.

bill introduced by Senator James O. Eastland, chairman of the Senate Judiciary Committee and the Subcommittee on Immigration and Naturalization. This bill included employer sanctions (civil penalties as well as an injunctive remedy) for the knowing employment of illegal workers, a legalization program with a July 1, 1968, cutoff date for eligibility, and a revision of the H–2 temporary worker program to allow for the admission of foreign workers to perform certain permanent as well as temporary jobs. Subcommittee hearings were held on S. 3074, but the bill was not reported to the full committee.

B. Ford Administration Proposals

In January 1975, President Gerald Ford established, under the chairmanship of Attorney General Edward Levi, a Cabinet-level Domestic Council Committee on Illegal Aliens. This committee's report, which was dated December 1976, stressed that control of illegal immigration will only result from a multifaceted approach:

> The Committee does not believe any single element among its recommendations can solve the illegal alien problem. It does believe that the cumulative effect of implementing the recommendations which follow will be to slow the flow of illegal aliens significantly and to take major strides toward the development of a more effective immigration policy.[3]

The Committee's recommendations included employer sanctions, a legalization program with a July 1, 1968, eligibility date, increased enforcement resources, increased penalties against smugglers, an evaluation of the H–2 program to make it more responsive to legitimate labor shortages, a revision of immigrant labor certification provisions to eliminate individual certifications, and a broad-based research effort to determine the nature and scope of immigration-related problems.

C. Carter Administration Proposals

The Carter administration, under the leadership of Attorney General Griffin Bell, Secretary of Labor Ray Marshall, and Immigration and Naturalization Service Commissioner Leonel Castillo determined early in its term that the problem of illegal immigration was a critical national issue:

> These proposed actions are based on the results of a thorough Cabinet-level study and on the groundwork which has been laid, since the beginning of the decade, by Congressmen Rodino and Eilberg and Senators Eastland and Kennedy * * *
>
> Each of these actions will play a distinct, but closely related, role in helping to solve one of the most complex domestic problems. In the last several years, millions of undocumented aliens have illegally migrated to the United States. They have breached our nation's immigration laws,

[3] Preliminary report, p. 240.

displaced many American citizens from jobs, and placed an increased financial burden on many States and local governments.[4]

After a task force study of the issue, a comprehensive immigration reform bill was drafted by the Carter administration, the "Alien Adjustment and Employment Act of 1977," and introduced in October 1977 as H.R. 9531 and S. 2252.

The Carter proposal contained five basic provisions:

(1) Civil penalties (injunctions and fines of $1,000 per illegal alien) against those employers who knowingly hire illegal aliens;

(2) Increased enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act, targeted to areas with high illegal employment;

(3) Permanent resident status for eligible illegal aliens who had resided in the United States since January 1, 1970, and a 5-year temporary resident status for those who had resided continuously since January 1, 1977;

(4) Substantially increased resources for enforcement at the Southern border and ports-of-entry; and

(5) Continued cooperation with source countries in their effort to improve their economies and improve control over alien smuggling activities.

While President Carter rejected any new temporary worker program, he did recommend reviews of the existing H-2 temporary worker program and U.S. immigration policy as a whole.

The Senate Judiciary Committee held hearings on S. 2252 in May 1978, but the Carter administration bill received no further action during the 95th Congress.

The Carter proposals were attacked by some vocal public interest groups and Members of Congress who claimed that the package was not sufficiently grounded in factual studies and that other alternatives to curb illegal immigration had not been adequately examined. It was this desire for a comprehensive review of U.S. immigration policy which led to the establishment of the bipartisan Select Commission on Immigration and Refugee Policy during the 95th Congress.

D. Select Commission on Immigration and Refugee Policy

Legislation enacted in 1978 (Public Law 95-412) established a 16-member Select Commission on Immigration and Refugee Policy consisting of 4 members of the Senate Judiciary Committee (Senators Mathias, Simpson, Kennedy, DeConcini), 4 members of the House Judiciary Committee (Representatives Rodino, Holtzman, McClory, Fish), 4 Cabinet Secretaries (from the Departments of Justice, State, Labor, and Health and Human Services), and 4 public members appointed by President Carter, plus its Chairman, the Reverend Theodore M. Hesburgh. Its mandate was—

---

[4] "Undocumented Aliens, Message from the President of the United States," U.S. House of Representatives, 95th Congress, 1st session, Doc. No. 95-202, Aug. 4, 1977, p. 1.

> To study and evaluate * * * existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate.

To fulfill this mandate the Select Commission "sought the most reflective, authoritative information from individuals, groups and studies through a variety of methods," including contracting social science and legal research, and conducting 12 regional public hearings and several site visits across the Nation. Consulations were held with experts inside and outside the Government, including scholars, representatives from State and local governments, Hispanic and other ethnic organizations, environmental and population groups, international organizations, church organizations, civil liberties groups, organized labor, employers' associations, and immigration lawyers.

After 2 years of study and deliberation, the Select Commission issued its final report, entitled "U.S. Immigration Policy and the National Interest" on March 1, 1981. The Commission noted that of all the issues related to immigration and refugee policy, the most critical was illegal immigration.

The Select Commission recommended "immediate action" to control illegal immigration and enumerated the key elements of their program:

> (1) Increased funding, training, and manpower for border and interior enforcement;
>
> (2) Enactment of legislation making it illegal for employers to hire illegal or undocumented aliens (such sanctions would be combined with some form of system to verify eligibility to work in the United States);
>
> (3) Increased enforcement of wage and working standards legislation; and
>
> (4) Legalization of status for certain aliens who entered the United States before January 1, 1980, and have resided here for a minimum number of years to be set by Congress (legalization to begin after a level of enforcement had been achieved which would prevent a legalization program from serving as a stimulus to further illegal entry).

The Select Commission rejected any new temporary worker program, but did recommend improving the existing H-2 program as a means for addressing temporary labor shortages without adversely affecting American workers.

Although the Select Commission did not reach a consensus as to the specific type of identification that should be required for verification of employment eligibility under employer sanctions laws, they did agree on the principles that should underlie a verification system: reliability, protection of civil rights and civil liberties, and cost-effectiveness. They state that without a reliable verification system, employer sanctions laws—the cornerstone of an effective program to reduce illegal immigration—would be very difficult to implement fairly and effectively:

> (The Commission) acknowledges the criticism leveled at previous employer sanctions legislation on the basis of the

> vague, and therefore unenforceable, requirement that employers must knowingly hire undocumented workers. It holds the view that an effective employer sanctions system must be based on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. . . . To be nondiscriminatory, they believe, any employee eligibility system must apply equally to each member of the U.S. workforce—whether that individual be an alien authorized to work in this country or a U.S. citizen.

The Select Commission's recommendations were reviewed at special joint congressional hearings and by the Reagan administration.

E. Reagan Administration Proposals

Following the submission of the final report of the Select Commission on Immigration and Refugee Policy on March 1, 1981, President Reagan appointed Attorney General William French Smith to chair a Cabinet-level task force to review the Commission's findings and recommendations and to develop a comprehensive immigration reform strategy.

On July 30, 1981, President Reagan announced the basic provisions of his proposals for immigration and refugee policy reform. Although he pledged that "America's tradition as a land which welcomes people from other countries" would continue, he emphasized that immigrants must be accepted "in a controlled and orderly fashion." The proposals were principally directed toward improving control of illegal immigration generally, as well as mass arrivals of undocumented aliens claiming asylum.

President Reagan's proposals relating to the general problem of illegal immigration included the following features:

(1) Sanctions against employers of four or more employees who knowingly hire illegal aliens, with civil penalties ranging from $500–$1,000 per violation;

(2) Verification of employment eligibility would be based on a combination of existing identification documents which would be required of all American workers at the time of seeking employment;

(3) Legalization of status of otherwise admissible aliens present in the United States as of January 1, 1980, as well as Cubans and Haitians here since January 1, 1981, on a 3-year renewable temporary basis. After 10 years residency (5 years for Cubans and Haitians), such persons could apply for permanent residence provided they demonstrated minimal English proficiency;

(4) A 2-year pilot temporary worker program to admit up to 50,000 Mexican nationals to perform jobs lasting 9–12 months in States and occupations where the Governor had certified a shortage of U.S. workers; and

(5) Increased resources for enforcement of existing immigration and labor laws.

President Reagan's proposal to handle future mass arrivals included:

(1) Increased enforcement measures, including legislation to strengthen penalties for the transporting of undocumented aliens to the United States, to prohibit U.S. residents from traveling to designated foreign countries during presidentially declared emergencies, and to strengthen existing law relating to the seizure and forfeiture of vessels used in violation of the law;

(2) Interdiction by the Coast Guard of certain vessels, and budget authority for additional detention facilities for undocumented aliens awaiting further legal proceedings;

(3) Legislation to expedite exclusion and asylum proceedings; and

(4) Contingency planning for future mass arrivals by sea.

Legislation implementing these and other Reagan administration proposals was introduced on October 22, 1981, as S. 1765/H.R. 4832, the Omnibus Immigration Control Act. This bill was introduced by request by the chairmen of the Senate and House Judiciary Committees, Senator Strom Thurmond and Representative Peter W. Rodino, Jr., and subsequently referred to the Senate and House Judiciary Committees. Hearings were held by the appropriate subcommittees.

F. 97TH CONGRESS (1981–1982)

On March 17, 1982, Senator Simpson, on behalf of himself, Senator Grassley, and Senator Huddleston, introduced S. 2222, the Immigration Reform and Control Act of 1982. The bill was a result of the 14 hearings and 5 consultations held by the Subcommittee on Immigration and Refugee Policy, the recommendations of the Select Commission on Immigration and Refugee Policy, and President Reagan's proposals. S. 2222 was subsequently examined during the 2 days of joint hearings with the House Subcommittee on Immigration, Refugees and International Law.

The Subcommittee on Immigration and Refugee Policy favorably reported the bill on May 6, 1982, by a vote of 4 to 0. The Committee on the Judiciary reported the bill, with amendments, by a vote of 16 to 1, recommending that it be passed by the Senate. Eleven amendments were accepted by the Committee on the Judiciary, the more important of which advanced the legalization date, eliminated an amendment added to the bill in subcommittee relating to the enforcement of immigration laws by local law enforcement agencies, and changed the standards for admitting foreign workers under the H–2 temporary worker program.

The bill was considered on the floor of the Senate on August 12, 13, and 17, 1982. Twelve amendments were accepted, the more important of which reinstated the legalization date of January 1,

1980, established a block grant program to reimburse State costs of benefits provided to legalized aliens, required reports on the discrimination and recordkeeping impacts of employer sanctions, and expressed the sense of the Congress that English is the official language of the United States. On August 17, 1982, the Senate passed S. 2222, 80 to 19.

The House Committee on the Judiciary considered its version of the bill, H.R. 5872, on September 14, 15, 16, 21, and 22, 1982, and favorably reported it on September 22, 1982. H.R. 5872 was debated on the House floor on December 16, 17, and 18, 1982, but was not brought to a vote. The bill died with the end of the 97th Congress.

During the 97th Congress, the Subcommittee on Immigration and Refugee Policy conducted 16 public hearings and 5 consultations on subjects related to reform of the Immigration and Nationality Act.

Hearings	*1981*
1. Joint Senate and House subcommittee hearings on the final report of the Select Commission on Immigration and Refugee Policy	May 5, 6, 7
2. Administration policy on immigration and refugees	July 30
3. United States as a country of mass first asylum	July 31
4. Employer sanctions	Sept. 30
5. Systems to verify authorization to work in United States	Oct. 2
6. Asylum adjudication	Oct. 14
7. Adjudication procedures	Oct. 16
8. Temporary workers	Oct. 22
9. Legalization	Oct. 29
10. Preference System	Nov. 23
11. H-2 temporary workers and nonimmigrants	Nov. 30
12. Nonimmigrant business visas and adjustment of status	Dec. 11
	1982
13. Population and immigration policy	Jan. 25
14. G-iv relief proposals	Feb. 1
15. Joint Senate and House subcommittee hearing on S. 2222/H.R. 5872—House side	Apr. 1
16. Joint Senate and House subcommittee hearing on S. 2222/H.R. 5872—Senate side	Apr. 20

Consultations:	
1. Systems to verify authorization to work in the United States	Sept. 10, 1981
2. Asylum	Nov. 16, 1981
3. Foreign immigration laws	Dec. 7, 1981
4. Adjudication procedures	Apr. 14, 1982
5. H-2 provisions	Apr. 15, 1982

G. 98TH CONGRESS (1983-1984)

On February 17, 1983, during the last Congress, Senator Simpson introduced S. 529, the Immigration Reform and Control Act of 1983. The bill was referred to the Subcommittee on Immigration and Refugee Policy, which held 4 days of public hearings. The Subcommittee favorably reported the bill on April 7, 1983, by a vote of 4 to 0.

On April 19, 1983, the Committee on the Judiciary met in executive session to consider and discuss S. 529. Two substantive and four technical amendments were accepted. The substantive amendments were:

(1) An amendment to require the General Accounting Office to investigate the effects of employer sanctions, including whether unlawful discrimination or unnecessary regulatory burdens had resulted; and

(2) An amendment to restore the fifth preference for unmarried brothers and sisters of U.S. citizens.

The Committee then voted 13 to 4 to favorably report the bill.

The bill was considered on the floor of the Senate on April 28 and May 16, 17, and 18, 1983. Eighteen amendments were adopted, the more important of which created a 3-year transitional labor program for agricultural employers, deleted the investor preference, required a search warrant for open-field searches of agricultural operations, provided for Federal reimbursement of the incarceration costs of illegal aliens, provided for congressional review of any presidentially proposed change in the worker verification system, and created a compromise system of asylum adjudication that allowed for limited judicial review. On May 18, 1983, the Senate passed S. 529, 76 to 18.

The House Committee on the Judiciary considered its version of the bill, H.R. 1510, on May 3, 4, and 5, 1983, and favorably reported it on May 5, 1983. The bill was then sequentially referred to the House Committees on Agriculture, Energy and Commerce, Education and Labor, and Ways and Means, and either reported or discharged on or before June 28, 1983. H.R. 1510 was considered by the House of Representatives on June 11, 12, 13, 14, 18, 19, and 20, 1984. The bill was passed on June 20, 1984, by a vote of 216 to 211.

House and Senate conferees began to meet on September 13, 1984, in order to resolve the differences between the two bills. Ten days of deliberation were held. However, conferees were unable to resolve the remaining differences at the final meeting of October 9, 1984. The bill died with the end of the 98th Congress.

IV. COMMITTEE PROCEEDINGS

Senator Simpson introduced S. 1200, the Immigration Reform and Control Act of 1985, on May 23, 1985. The bill was referred to the Subcommittee on Immigration and Refugee Policy.

The Subcommittee on Immigration and Refugee Policy conducted 3 days of public hearings on the bill on June 17, 18, and 24, 1985. The Subcommittee was discharged from further consideration of the bill on July 10, 1985.

The Committee on the Judiciary considered and discussed the bill on July 18, 23, 25, and 30. Several technical and other amendments were considered, as discussed below. On July 30, 1985, by a vote of 12 to 5, the Committee ordered the amended bill reported out with the recommendation that it be passed by the Senate. The rollcall vote was as follows:

YEAS (12)	NAYS (5)
Thurmond	Biden*
Mathias*	Kennedy*
Laxalt*	DeConcini
Hatch	Heflin*
Simpson	Simon
East	
Grassley	
Denton*	
Specter	
McConnell	
Metzenbaum	
Leahy*	

*By proxy.

The following amendments were adopted by voice vote:

1. Simpson amendment to ensure that members of the Legalization Commission support the concept of the kind of legalization program contained in the bill, and to conform the finding required to "trigger" legalization to recommendations of the Select Commission on Immigration and Refugee Policy.

2. Simpson amendment to allow reimbursement payments to States for incarceration costs only with respect to illegal aliens convicted of a felony.

3. A package of technical amendments offered by Senator Simpson.

4. Simon amendment to require INS to report to Congress in 90 days on management improvements which would improve agency efficency.

5. Simon amendment to create a United States-Mexico Commission to determine methods to promote long-term Mexican economic growth.

6. Metzenbaum amendment to impose a criminal penalty of up to $3,000 per alien, 6 months imprisonment per violation, or both, for a "pattern or practice" of violations after a civil penalty for a "pattern or practice" had already been assessed.

The following amendment was adopted by rollcall vote as indicated:

Metzenbaum amendment to insure that the effective date of the legalization program is no later than 3 years from enactment.

YEAS (10)	NAYS (4)
Thurmond	Hatch
Mathias*	Kennedy*
Laxalt*	DeConcini
Simpson	Simon
East	
Grassley	
Denton*	
Specter	
McConnell	
Metzenbaum	

*By proxy.

The following amendments were defeated by rollcall vote, as indicated:

1. Kennedy amendment to delete the legalization commission requirement and advance the cutoff date from January 1, 1980, to January 1, 1981.

YEAS (6)	NAYS (8)
Biden	Thurmond
Kennedy	Laxalt
Metzenbaum	Hatch
DeConcini*	Simpson
Leahy*	East
Simon	Grassley
	Denton
	Specter*

*By proxy.

2. Kennedy amendment to require expedited procedures on any joint resolution introduced to "sunset" employer sanctions in 3 years, if the GAO finds that such sanctions have resulted in a widespread pattern of discrimination.

YEAS (7)	NAYS (8)
Mathias*	Thurmond
Biden	Laxalt
Kennedy	Hatch
Metzenbaum	Simpson
DeConcini*	East
Leahy*	Grassley
Simon	Denton
	McConnell*

*By proxy.

3. Kennedy amendment to delete the temporary agricultural worker ("N") provisions and the agricultural labor transition program, thus retaining only the present H-2 temporary worker program.

YEAS (4)	NAYS (13)
Biden	Thurmond
Kennedy	Laxalt*
Metzenbaum	Hatch
Simon	Simpson
	East
	Grassley
	Denton
	Specter
	McConnell*
	Byrd*
	DeConcini*
	Leahy*
	Heflin*

*By proxy.

4. Metzenbaum amendment to sunset the bill's temporary agricultural worker ("N") program in 3 years, and to impose a limit of 100,000 persons per year during the 3 years.

YEAS (4)	NAYS (10)
Biden	Thurmond
Kennedy	Laxalt*
Metzenbaum	Hatch
Simon	Simpson
	East
	Grassley
	Denton
	McConnell*
	DeConcini*
	Byrd*

*By proxy.

V. SECTION-BY-SECTION ANALYSIS

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—FUNDING FOR IMPROVED ENFORCEMENT

Section 101—Authorization of appropriations for enforcement and service activities of the Immigration and Naturalization Service and wage and hour enforcement

Subsection (a) expresses the sense of Congress that an increase in Immigration and Naturalization Service (INS) border patrol and other inspection and enforcement activities, and in INS examinations and service activities, are essential elements of the program of immigration control established in the legislation.

Subsection (b) authorizes $840 million in fiscal year 1987 and $830 million in fiscal year 1988 for the INS, in part for these purposes.

Subsection (d) authorizes the appropriation to the Department of Labor of additional sums as may be necessary for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs.

Section 102—User fees

Section 102 provides that the Attorney General, in his discretion, may impose fees for an alien's use of border or other Immigration and Naturalization Service facilities and services, in an amount commensurate with the costs attributable to such use.

PART B—INCREASED PENALTIES FOR IMMIGRATION-RELATED VIOLATIONS

Section 111—Unlawful transportation of aliens to the United States

Section 111 of the bill amends INA section 274, which provides for criminal penalties and seizure of property in connection with the transportation of illegal aliens to or within the United States and the concealing, harboring, or shielding from detection of such aliens. First, it modifies the "Texas Proviso" (the proviso located at the end of subsection (a) of current INA section 274), which under current law provides that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." This section of the bill provides that for purposes of the harboring offense, as amended by the bill (see below), "employment (including the usual and normal practices incident to employment) *by itself* does not constitute harboring." (Emphasis added.) By this modification the Committee intends to make clear that although employment does not by itself constitute harboring, employment and employers are not exempt from coverage. Employment (including the usual and normal practices incident to employment) in combination with other activities or other circumstances, or employment practices which are not usual and normal, may constitute harboring. For example, if an employer, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, engages in, or attempts to engage in, activities which are not the "usual and normal practices incident to employment," knowing or in reckless

51-567 O - 85 - 2

disregard of the fact that this will have a substantial probability of harboring such illegal alien, i.e., substantially facilitating such alien's remaining in the United States, then such employer may be in violation of this section. In the view of the Committee, "usual and normal practices incident to employment" excludes, among other things, activities which have as a major purpose such harboring, regardless of how frequent such activities are in the industry or kind of business in which such employer is engaged. Such usual and normal practices would, however, include the furnishing of housing or other services which are required by State or Federal law, or any regulation thereunder. The Committee intends that the modified language be interpreted literally. The language is a clarification of the meaning of "harbors." It does not pertain to the meaning of "conceals" or "shields from detection."

Second, the section clarifies and expands the coverage of INA section 274(a). The state of mind required for an offense is expressly stated to be knowledge or reckless disregard of the relevant facts. With respect to the offenses pertaining to illegal aliens within the United States, a violation requires that a person act "knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law."

With respect to the offense of subparagraph (A) of paragraph (a)(1), a violation requires that a person act "knowing or in reckless disregard of the fact that a person is an alien." This offense does not require that the alien not have received prior official authorization to come to, enter, or reside in the United States, merely that the person bring to or attempt to bring to the United States the alien "at a place other than a designated port of entry or place other than as designated by the Commissioner."

This is in contrast to the offense of paragraph (a)(2), which also relates to a person who "brings to or attempts to bring to the United States in any manner whatever" an alien, but which requires for a violation that a person act "knowingly or in reckless disregard of the fact that an alien has not received *prior* official authorization to come to, enter, or reside in the United States" (emphasis added) and does not require that the bringing to the United States be at a place other than a designated port of entry or place other than as designated by the Commissioner (the paragraph does provide, however, that the penalty may be increased if "the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry"). No intent to smuggle is required. Penalties may also be increased for a second or subsequent offense, for an offense done for the purpose of commercial advantage or private financial gain, and for an offense during which either the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act intended to mislead any officer, agent, or employee of the United States.

Third, the section increases the fines which may be imposed for violations of INA section 274(a) and strengthens the provisions allowing for the seizure or forfeiture of conveyances used in the commission of such acts.

Section 112—Fraud and misuse of certain documents

Subsection (a) extends the coverage of 18 U.S.C. 1546, which provides for criminal penalties for the use or manufacture of counterfeit or altered entry documents or entry documents relating to another individual, to include all documents which may be used to show authorized stay or authorized employment in the United States.

Subsection (b) provides for a criminal penalty for using a false document, a document not lawfully issued to the possessor, or a false attestation, for the purpose of satisfying the employment verification system requirements of INA section 274A(b) or 274A(c) or any regulation thereunder.

The Committee intends that the new coverage of INA section 274 enable the prosecution of the procurers and purveyors of false, altered, or fraudulently obtained documents and the aliens who use such documents to remain in the United States in violation of law or to obtain unauthorized employment. The Committee also intends that the INS prosecute aliens who present any application, affidavit, or other document required for legalization under section 202 of the bill, knowing that it contains a false statement with respect to a material fact, in violation of current INA section 274, or who, in connection with a legalization application, violate sections 1001 and 1028 of the United States Code (relating to false or fraudulent statements or documents and to fraud in connection with identification documents).

Section 113—Restrictions on adjustment of status

Subsection (a) amends section 245(c) of the INA to provide that aliens who have failed for any reason to maintain continuously a legal status since entry in the United States will not be eligible to adjust to permanent resident status under INA section 245. The present statutory provision prohibits such adjustment only if the failure to maintain legal status is due to unauthorized employment. The new subsection also provides that special immigrants described in INA section 101(a)(27)(H) will not be subject to the prohibition. Current law exempts only immediate relatives of U.S. citizens.

It is the intention of the Committee to make adjustment of status a much less frequently used method of obtaining permanent resident status in the United States. Furthermore, the Committee expects that the administration will continue to implement immigration entry as before and not respond to the new limitations on adjustment of status by making special arrangements enabling aliens who are not nationals of countries which border on the United States to obtain immigrant visas in such countries.

PART C—CONTROL OF UNAUTHORIZED EMPLOYMENT OF ALIENS

Section 121—Making knowing employment of unauthorized aliens unlawful

Section 121(a)(1) inserts a new section 274A into the Immigration and Nationality Act. Subsection (a) of that new section makes it unlawful for anyone (1) after enactment to hire, or for a fee or

other consideration to recruit or refer, for employment in the United States an alien knowing that such alien is unauthorized to be so employed, and (2) to continue to employ an alien hired after enactment, knowing that the alien is not authorized to be so employed. The phrase "to recruit or refer for a fee or other consideration" is intended to include the activities of employment agencies, executive search firms, and labor union hiring halls. The phrase "for a fee or other consideration" was inserted so that such activities as referrals by friends or recruitment by corporations with respect to their own employees would be excluded.

This subsection of the new INA section 274A is intended to be broadly construed with respect to coverage. With the exception of the categories noted, all employers, recruiters, and referrers are covered: individuals, partnerships, corporations and other organizations, nonprofit and profit, private and public, who employ, recruit, or refer persons for employment in the United States.

The subsection provides that any employer, recruiter, or referrer which has uniformly complied in good faith with the employment verification system described in subsection (b) has an affirmative defense in any civil or criminal proceeding in connection with an alleged violation of subsection (a)(1). Subsection (a) also establishes a presumption that an employer of four or more persons has knowingly hired an alien not authorized to work in the United States if such employer is found to have in fact hired such an alien and has not uniformly followed in good faith the employment verification procedures. Similarly, a person or entity which recruits or refers for a fee or other consideration more than four individuals in any 12-month period and who is found to have in fact recruited or referred an unauthorized alien shall be presumed to have knowingly done so unless such person or entity has uniformly complied in good faith with the employment verification system. These presumptions may be rebutted by presentation of "clear and convincing" evidence that such an employer, recruiter or referrer did not knowingly hire (or recruit or refer) an unauthorized alien. An employer who has not complied with the verification procedure in subsection (b) may, for example, rebut the presumption if it can demonstrate that its employment procedures as applied are reasonably likely to avoid the employment of unauthorized aliens. An employer may not merely plead ignorance—willful or unwillful—in order to overcome the presumption. The Committee believes that the affirmative defense which results from compliance and the presumption which results from noncompliance will encourage the majority of employers to elect to comply with the optional worker verification system.

Small businesses are not made subject to the presumption. The Committee seeks to avoid placing an undue burden on such businesses, which are estimated to represent 50 percent of employers but only 5 percent of employees.

Subsection (b) of the new section INA 274A sets forth a procedure for the verification of work eligibility which must be used if such affirmative defense is to be obtained and such presumption is to be avoided. It requires that an employer (or recruiter or referrer) attest, under penalty of perjury, on a form approved by the Attorney General that such employer has examined what reasonably ap-

pears on its face to be either (1) a document which establishes both employment authorization and identity, including the employee's U.S. passport, certificate of U.S. citizenship, certificate of naturalization, unexpired foreign passport with an appropriate, unexpired endorsement of the Attorney General, or a resident alien card or other alien registration card (if it contains the individual's photograph and evidence of employment authorization), or (2) a combination of (i) a document which establishes employment authorization, including the employee's Social Security card, certificate of birth in the United States or establishing U.S. nationality, which the Attorney General finds acceptable by regulation, or other documentation acceptable to the Attorney General, and (ii) a document which establishes identity, including a driver's license or other State identification card, or (for those under 16 or in States that do not issue identification documents) another type of document which the Attorney General finds, by regulation, to be a reliable means of identification.

Subsection (b) of the new INA section 274A also requires the employee to attest on the same form that the employee is a citizen or permanent resident alien, or is otherwise authorized to be so employed.

The employer is required to retain the completed form, and make it available for inspection by the Immigration and Naturalization Service, for 3 years after hiring or 1 year after the date the employment is terminated, whichever is later.

Subsection (c)(1) of the new INA section requires the President to implement such changes in or additions to the verification system as may be necessary to establish a secure system to verify employment eligibility.

Subsection (c)(2) places certain restrictions on any changes in the verification system which the President may implement. Any new system must reliably verify that an applicant is the person he claims to be and that such a person is eligible to work. If the new system will involve examination by an employer of any document, that such document must be in a form which is resistant to counterfeiting and tampering. The Committee intends that the phrase "form which is resistant to counterfeiting and tampering" be interpreted to mean a form specially designed to be so resistant, through the use of fine engraving, special material, magnetic or other coding, or otherwise. Personal information concerning an individual may be made available to Government agencies, employees, and other persons only to the extent necessary to verify that the individual is authorized to be employed. Such verification may be withheld for only one reason: because the individual is an alien not authorized to be employed. The new verification system may not be used for law enforcement, other than as related to enforcement of the INA or several provisions of title 18 of the United States Code relating to false or fraudulent statements or documents. If a new system were to involve presentation of a new card or other document designed specifically for use in the verification system, such document could not be required to be carried on the person or to be presented for any other purpose (expect in connection with the enforcement of several provisions of title 18 of the

United States Code relating to false or fraudulent statements or documents).

Subsection (c)(3) of the new INA section 274A requires that the President give notice to Congress before implementing any changes in the worker verification system. Two years notice would be required in the case of a "major change" in the verification system, such as creation of a new card or other document designed specifically for this purpose, or establishment of a telephone verification system. Sixty days notice would be required for other than major changes. These would include, for example, improvements in the present Social Security card.

The subsection also states that a "major change" may not be implemented unless Congress specifically provides funds for implementation of the change.

Subsection (c)(4) authorizes the President to undertake demonstration projects of different changes in the verification system. Such projects would have to conform to the restrictions set forth in paragraph (2), and could not last more than 3 years.

Identification fraud is a staggering problem. A May 12, 1983, report of the Senate Permanent Subcommittee on Investigations dealing with Federal identification fraud estimated that the cost of fraudulent schemes involving Federal, State, and local entitlement programs alone exceeds $24 billion annually. Hearings on this issue during the 98th Congress by Senator Dole's Senate Judiciary Committee's Subcommittee on Courts also found that, at present, there is easy access to counterfeit identification documents such as Social Security cards, birth certificates, and driver's licenses. Counterfeit documents can be obtained readily and inexpensively anywhere in the United States or neighboring countries from illegal commercial vendors or can be fashioned by "do it yourself" techniques.

Last October, as part of the Comprehensive Crime Control Act, Congress required that agencies operating identification systems use identification documents, insofar as possible, with common descriptive terms and formats so as to reduce redundancy and duplication and to facilitate positive identification. In addition, the Congress required that within 3 years the President make recommendations to the Congress for the enactment of comprehensive legislation concerning Federal identification systems taking into account: (1) the protection of privacy, (2) appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and (3) the exchange of personal identification information authorized by Federal or State law.

The Committee expects that the President and the Attorney General will take the identification fraud considerations expressed in the Comprehensive Crime Control Act into account, including the results of the President's study, when available, when decisions are made about the type of identification and employment authorization documents which should be relied upon by employers to make determinations under section 121 and about the improvements which should be made therein.

Furthermore, the Committee believes that the President and the Attorney General, in conjunction with other interested Departments and agencies, should work with State and local identification document-issuing authorities to develop demonstration projects and

programs to improve the reliability and validity of identification documents. Efforts should be made to bring State and Federal document-issuing authorities together to deal with the problems of document fraud and abuse and to develop common strategies to deal with them. Document formats could be standardized and software developed for the exchange of document information for the purposes of update, correction, and verification. For example, one of the most prevalent forms of document fraud involves the use of duplicate copies of birth certificates of deceased individuals to obtain new identification documents for an individual who then assumes the identity of the deceased individual. Unless some systematic means is developed for annotating the birth certificate with death information, the potential for fraudulent misuse will remain great.

Subsection (d)(1) of the new INA section requires that the Attorney General establish complaint and investigation procedures. The new procedure must provide for individuals to file written, signed complaints concerning potential violations; for INS to investigate the complaints which have a substantial probability of validity; for INS or other Department of Justice entities to investigate violations on their own initiative; and for designation of a specific unit in INS which will handle the prosecution of cases of violation of INA section 274A.

The Committee intends the written, signed complaint procedure to enhance compliance with subsection (a) by providing a mechanism to inform the INS of violations of the law. The Committee is concerned, however, that such a mechanism could be used for harassment purposes against innocent employers. Furthermore, an excessive amount of INS time and resources might be expended in the investigation of spurious complaints.

Specific protections have been included to minimize the risk of these undesirable results. For example, any complaint under this subsection must be in writing and must be signed by the person or entity filing the complaint. In addition, the subsection requires that any signed, written complaint must have a substantial probability of validity. The Committee intends that determinations by the INS to take no action with respect to complaints filed pursuant to this subsection shall be final and are not subject to further review. The Committee also expects that the procedures developed by the Attorney General will provide additional protections for innocent employers against unwarranted investigations and additional measures to avoid wasteful use of INS time and resources. Finally, the Committee notes that the penalties provided for in section 1001 of title 18 of the United States Code (relating to false or fraudulent statements) would be available in certain cases of deliberately false statements.

Subsection (d)(2) of the new INA section 274A sets forth the penalties available against persons or entities which knowingly employ or recruit or refer for a fee or other consideration an unauthorized alien, as prohibited in subsection (a) of the new INA section. If, after notice and the opportunity for a hearing, if requested, an immigration judge determines, upon a preponderance of the evidence, that the person or entity has violated subsection (a), the judge shall state his findings of fact and cause to be served on the person or

entity a cease-and-desist order. In addition to the order, the violator shall be assessed a civil penalty of $100 to $2,000 per alien for the first offense, $2,000 to $5,000 per alien for subsequent offenses, and $3,000 to $10,000 per alien for a "pattern or practice" of violations. The judge may also require the violator to comply for up to 3 years with the verification procedure or take other appropriate remedial action.

Criminal penalties are available in the case of a person or entity which engages in a "pattern or practice" of violations after having previously been assessed a civil penalty for a "pattern or practice" of violations. Fines of up to $3,000 per unauthorized alien, or imprisonment of up to 6 months for the entire "pattern or practice" of violations, or both, may be assessed. The presumption of knowing hiring in subsection (a)(3) of the new INA section shall not apply in the case of a criminal prosecution.

Subsection (d)(3) provides that immigration officers and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated. Immigration judges, by subpoena, may compel the attendance of witnesses and the production of evidence at any designated place or hearing. The Attorney General may seek a court order from a U.S. District Court to enforce such subpoena.

Subsection (d)(4) of the new INA section provides that in applying the compliance provisions of subsection (d) to a person or entity composed of distinct, physically separate subdivisions, each such subdivision shall, under certain conditions, be considered a separate person or entity. Such conditions are that the hiring, or recruiting or referring for employment, by each subdivision be conducted separately, without reference to the practices of another subdivision, and not under the control of or under common control with another subdivision.

Subsection (d)(5) authorizes the Attorney General to provide for administrative appellate review of the determination of an immigration judge under this subsection.

Subsection (e) of the new INA section 274A requires that, with certain specified exceptions, judicial review of an order under this subsection shall be in the appropriate Federal judicial circuit and shall proceed according to chapter 158 of title 28, United States Code—the statute currently used for judicial review of an order of deportation. The exceptions include the following: petitions for review must be filed no later than 45 days after the date of the final order; review shall be in either the Federal judicial circuit in which the administrative proceedings before the immigration judge were conducted, or in which the residence of the petitioner is located, but not both; the review shall be based solely upon the administrative record; and the immigration judge's findings of fact shall be conclusive if supported by substantial evidence.

Subsection (f) of the new INA section provides that if a violator fails to comply with a final order issued under subsection (d), the Attorney General shall file suit to seek compliance in the appropriate U.S. District Court. The subsection also provides that in any such suit the validity and appropriateness of the order shall not be subject to review.

Subsection (g) requires that in any documentation or endorsement of an alien's authorization of employment in the United States the Attorney General conspicuously indicate on such documentation or endorsement any limitations with respect to period or type of employment or employer. The subsection also provides that the section preempts State and local laws imposing civil or criminal sanctions for the employment, or the recruitment or referral for a fee or other consideration for employment, of aliens not authorized to be employed in the United States.

Section 121(b) of the bill provides that, with certain specified exceptions, the requirements of section 274A take effect immediately. The exceptions include the following: subsection (a) of the new INA section 274A will apply only to illegal aliens hired, or recruited or referred, after enactment; during the first 6 months notice will be given as to apparent violations of subsection (a), but no penalty shall be assessed; and during the subsequent 6-month period the first apparent offense will result only in a warning.

Section 121(c) requires interim or final regulations implementing this section be issued no later than the first day of the seventh month after enactment. The subsection also provides that during the first year after enactment, the Attorney General, in cooperation with the Secretary of Commerce, the Secretary of Health and Human Services, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Agriculture, and the Administrator of the Small Business Administration, must disseminate forms and information to employers, employees, and the public concerning the provisions of the new INA section 274A.

Section 122—Temporary agricultural worker program

Section 122(a) amends the definition of "nonimmigrant" to distinguish aliens coming temporarily to the United States to perform temporary or seasonal agricultural services, described in subparagraph (N) of INA section 101(a)(15) as amended by this bill, from aliens coming temporarily to perform other temporary services or labor, described in subparagraph (H) of such amended section.

Section 122(b) requires the Attorney General to consult with the Department of Agriculture, as well as the Department of Labor, before he determines whether to admit any temporary agricultural worker under 101(a)(15)(N). The Committee wishes to emphasize that the decision whether to issue a labor certification, as required in new INA section 216 (see below), must be made by the Department of Labor.

Section 122(c) creates a new section 216 in the INA, "Admission of Temporary Agricultural Workers."

Subsection (a) of the new INA section 216 provides that a petition to import an alien as an "N" worker cannot be approved by the Attorney General unless the petitioner has applied for a certification from the Secretary of Labor that (i) there are not sufficient U.S. citizen and authorized alien workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the required services, and (ii) the employment of aliens in such services will not adversely affect the wages and working conditions of workers in the United States similarly employed. The present requirement that in every case employers must

make a nationwide recruitment and hiring effort has been deleted as excessively burdensome and because it is not currently required by the Department of Labor. However, the Committee intends that in making its certification decision with respect to particular employment, the Department of Labor will continue to consider U.S. citizen and permanent resident alien migrant workers and U.S. citizens from Puerto Rico who are "able, willing, qualified and available" workers for such employment. The requirement that the employment of aliens not adversely affect the wages and working conditions of workers similarly employed in the United States is not intended to require the Department of Labor to change its existing practice of determining adverse effect wage rates on a State-by-State basis.

Subsection (a) of the new INA section 216 also provides that the Secretary of Labor may impose a fee as a condition of applying for the labor certification, for the purpose of recovering the reasonable costs of processing.

Subsection (b) of the new INA section provides that the Secretary of Labor may not issue a labor certification for an employer if such employer during the previous 2 years substantially violated an essential term or condition of a labor certification or did not pay every penalty which has been assessed by the Secretary of Labor for a violation of a term or condition of such labor certification. However, such an employer may not be denied certification for more than 1 year for any such violation. An employer shall also be denied labor certification if he does not provide the Secretary of Labor with adequate assurances that insurance will be provided to "N" workers which will provide benefits at least equal to the applicable State's worker compensation program (unless the employment is covered by the State program).

Subsection (b) of the new INA section also provides that the Secretary may not issue a labor certification for an employer if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification. Current regulations promulgated by the Department of Labor state:

20 CFR Sec. 655.203(a): *Assurances.* As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage.

Furthermore, current regulations promulgated by the Immigration and Naturalization Service state:

8 CFR Sec. 214.2(h)(11):

Effect of strike (i)—A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely

affect the wages and working conditions of U.S. citizen or lawful resident workers.

It is the Committee's view that the regulations of the Immigration and Naturalization Service and the Department of Labor now in force with respect to strikes and lockouts together establish appropriate standards. If such regulations are changed, the statutory reference to "regulations" is to be interpreted to refer to the new regulations.

Subsection (c) of the new INA section 216 provides that the Secretary of Labor may not require employers to file an application for a labor certification for a temporary agricultural worker more than 65 days before the worker's services are required. Subsection (c) of the new section also provides that the application of the employer shall be considered to have met the wage and working conditions requirements in new INA section 216(a)(1)(B), unless the Secretary of Labor informs the employer within 14 days of the application that such requirements have not been met. The Secretary of Labor is directed to make the labor certification at least 20 days before the date the "N" worker's services are first required if the employer has complied with the requirements for certification and if the employer has not found or been referred U.S. citizens or authorized aliens who have agreed to perform the needed services on the terms and conditions of a job offer which meets the requirements of the regulations. In order for the certification to remain effective, the employer must continue to accept U.S. citizens or authorized aliens who apply or are referred until the date the "N" workers depart for work with the employer. In addition, subsection (c) of the new section allows agricultural employers to comply with the regulations concerning the furnishing of worker housing by payment to the "N" worker of a reasonable housing allowance in lieu of furnishing actual housing, but only when suitable housing is available close to the location of employment.

Subsection (d) of the new INA section 216 clarifies the role of agricultural associations in the program. The petition for admission of an "N" worker and the application for a labor certification may be filed by an association representing agricultural producers. Subsection (d) provides that the labor certification issued to such associations may be used for the certified job opportunities of any of its producer members. Furthermore, joint or sole employer associations may transfer their "N" workers among their members for certified job opportunities. In the case of a violation under subsection (b)(2) of the new INA section 216 (which results in temporary disqualification from receiving subsequent labor certifications), an individual member's violation would not be counted against the joint or sole employer association of which he was a member (or against the other producer members individually), unless the Secretary of Labor found that the association or other members participated in, or had knowledge of and derived benefit from, the violation. In the case of such a violation where the joint or sole employer association was involved, the violation would not be counted against the individual producer members unless the Secretary of Labor found that such member or members participated in, or had knowledge of and derived benefit from, the violation. The Committee intends that more than mere membership in an association be

established before an individual member may be found to have "participated" in a violation by the association or by another producer member.

Subsection (e) of the new INA section 216 provides for the following expedited appeal and petitioning procedures for agricultural employers: (1) If labor certification is denied, the Secretary of Labor shall provide an expedited review of the denial, or at the applicant's request, a de novo hearing on the issues involved in the denial. In the case of an application with respect to "N" workers who are sought to perform services in the production of "perishable commodities" (as defined by the Secretary of Agriculture), the expedited review shall occur within 72 hours. (2) If an employer asserts that referred eligible domestic workers are not able, willing, or qualified for employment-related reasons, the Secretary of Labor shall make a new determination on such an employer's certification application within 72 hours of such employer's request. The employer has the burden of establishing that workers referred are not actually able, willing, or qualified because of employment-related reasons. (3) If a labor certification has been denied because of the availability of U.S. citizens and authorized aliens, and the U.S. citizens and authorized aliens who have agreed to perform the services do not report for work at the time and place of need, the Attorney General shall provide for the entry of an appropriate number of "N" workers if necessary. (4) If an employer faces a critical need for workers due to unforseen circumstances—for example, an unexpected change in climatic conditions—the Secretary of Labor shall permit the employer to amend the application for certification or make a new application and may waive some or all of the recruitment period normally required. In such cases of new or amended applications, the Secretary shall make a new determination of the need for workers no later than 20 days before the date of need, provided that if the amended or new application is made later than 3 days before the date of need the Secretary shall make the determination within 72 hours of its submission.

Finally, subsection (e) of the new INA section 216 provides that if the Secretary of Labor denies a labor certification or fails to act on the application, the Attorney General may permit the applicant to present counterveiling evidence with respect to the availability of domestic workers and the observance of Department of Labor employment policies.

Subsection (f) of the new INA section restricts the duration of an "N" worker's visa to the aggregate period (or periods) which the Attorney General establishes by regulation. An exception to this authority is granted where the Secretary of Labor has recognized before enactment of S. 1200 that certain agricultural labor or services require stays which may exceed 1 year. This exception pertains to the particular historical case of the sheep-raising industry. Aliens have been admitted under the H–2 provisions of the Act to work as range sheepherders since 1958. They have been allowed to stay for 3-year periods without mandatory return to their country of origin. This provision will allow the continuation of that practice under the new law.

Subsection (f) also provides that any alien admitted in the previous 5 years under the "N" program who violated a term or condi-

tion of that admission would not be allowed to enter as an "N" worker. Finally, the new subsection clarifies that an employer with an approved petition for an "N" worker may hire for a certified job opportunity such a worker who has completed a labor contract with another employer. The Attorney General is directed to provide a procedure which would allow "N" workers who have completed a work contract and are otherwise not deportable to remain in the United States for brief periods in order to seek and accept employment with employers who are authorized to employ such workers. The Committee does not intend, however, that "N" workers be unrestricted in their movement during those brief periods.

Subsection (g) of the new INA section 216 authorizes the Secretary of Labor to take such actions as may be necessary to assure employer compliance with the terms and conditions of employment under this new INA section. Subsection (g) also requires the Attorney General to provide for the endorsement of entry and exit documents of "N" workers as may be necessary to carry out new INA section 274A, added by section 121(a) of this bill. Finally, subsection (g) provides that the provisions of the new INA section 216 and of subsections (a) and (c) of INA section 214 (relating to the admission of nonimmigrants generally) preempt State and local laws regulating admissibility of nonimmigrant aliens.

Section 122(d) authorizes the appropriation to the Department of Labor of $10 million for each fiscal year (beginning with fiscal year 1987) for the purpose of recruiting domestic workers for jobs which "N" alien workers might otherwise perform and monitoring terms and conditions of employment of "N" workers and U.S. workers employed by the same employers. Subsection (d) also authorizes such sums as are necessary to enable the Secretary of Labor to make the determinations and certifications required under the "N" program, and to enable the Secretary of Agriculture to carry out his duties under the program.

Section 122(e) prohibits an alien who entered the United States as an "N" worker, other than an "immediate relative" (as defined in INA section 201(a) and (b)) of a U.S. citizen, from adjusting his status under INA section 245 or 248.

Section 122(f) provides that the amendments contained in subsections (a), (b), and (c) of this section of the bill will apply to petitions and applications filed under INA sections 214(c) and 216 on or after the first day of the seventh month beginning after enactment.

Section 122(g) requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to approve all regulations implementing INA sections 101(a)(15)(N) and 216, added by this bill, before they are issued. The Committee believes that the Attorney General, as the final nonjudicial authority on the proper interpretation of immigration laws, should approve all regulations relating to "N" workers. The Committee intends that the Secretary of Labor continue to issue all regulations relating to labor certification, but believes that the Department of Agriculture should have a meaningful advisory role in formulating regulations for the "N" program, since these will be concerned with the particular needs of agriculture.

Section 123—Agricultural labor transition program

Section 123(a) requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to establish an agricultural labor transition program. The purpose of the program is to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of U.S. citizens and authorized aliens. The program will become effective on the first day of the seventh month after the date of enactment, and will remain in effect for 3 years.

Subsection (b) provides that during the first year of the program, an agricultural employer will be able (except as provided in subsections (c), (d), and (e), described below) to meet up to 100 percent of his need for nondomestic seasonal agricultural labor with transition workers, up to 67 percent of that need during the second year of the program, and up to 33 percent of that need during the third year. Because agricultural employers currently rely on an unauthorized workforce whose exact size is unknown, the Committee believes that the Attorney General, in determining the number of transition workers to be available to agricultural employers, should adopt flexible guidelines.

Subsection (c) provides that nothing in this section permits transitional workers to replace U.S. workers or other legal alien workers.

Subsection (d) provides that transitional workers will be covered by all Federal and State laws and regulations governing migrant and seasonal agriculture workers. This includes, but is not limited to, the Migrant and Seasonal Agricultural Worker Protection Act.

Subsection (e) provides that an undocumented alien in the United States will be eligible to be a transitional worker if he was employed on the date of enactment as a seasonal agricultural worker in the United States or has been employed as such a worker for at least 90 days during a period of time after January 1, 1980, and before the date of enactment. An alien will not be eligible to participate if he is deportable on any ground except those relating to illegal entry, visa overstay, or lack of possession of proper documents. An alien who qualifies as a transitional worker may not adjust status, unless he is an immediate relative as described in INA section 201(b), but he is not ineligible for the legalization program of title II of this bill.

Subsection (f) provides that an employer must perform the following in order to participate in the transition program: (1) notify the Attorney General of his intention to use the program within 12 months of the beginning of the program, and (2) provide such information as the Attorney General may specify on his seasonal agricultural worker needs in past and future years.

Subsection (g) provides that after an employer begins to participate in the transition program, the employer must submit, at the Attorney General's request, a report on the number of transition workers employed, as well as the number of domestic and foreign seasonal agricultural workers employed.

Subsection (h) provides that any eligible employer who uses the transition program and the "N" worker program under section 216

of the INA must provide the wages and working conditions required by the "N" program to all similarly employed workers.

Subsection (j) provides that the Attorney General may require a fee of participants in the transition program, in order to recover the reasonable costs of processing registrations under the program.

Subsection (k) provides that a work permit or other documentation provided to a transitional worker shall, in accordance with regulations of the Attorney General, be considered documents evidencing employment authorization for purposes of INA section 274A(b)(1)(C), as added by this bill. An alien employed as a transitional worker and in possession of a properly endorsed such work permit or other documentation shall, for purpose of INA section 274A, be considered to be authorized by the Attorney General to be so employed during the period of time indicated on such documentation.

Section 124—Commission on temporary agricultural worker programs

Subsection (a) establishes a 12-member commission on temporary agricultural worker programs: two to be appointed by the Attorney General, two to be appointed by the Secretary of Labor, two to be appointed by the Secretary of Agriculture, three to be appointed by the Speaker of the House, and three to be appointed by the President pro tempore of the Senate. The commission is intended to be comprised of experts in the field of agricultural and labor issues. The subsection requires that appointments be made in a way which produces a balanced representation of the interests involved in temporary agricultural worker programs. Those appointed shall include more than one individual representing labor organizations for temporary agricultural workers and more than one representing employers of nondomestic temporary agricultural workers.

Subsection (b) provides that the commission shall study and review the "N" temporary agricultural worker program in section 122 and the 3-year agricultural labor transition program in section 123—paying particular attention to the impact of those programs on the labor needs of U.S. agricultural employers and on the wages and working conditions, and job opportunities of U.S. agricultural workers. The commission is also directed to study and review the following in connection with the "N" program, as provided in INA section 216, added by section 122(c) of the bill: (1) the standards for the labor certification required by subsection (a)(1) of INA section 216, (2) whether there should be a statutory or other specific limit on the number of workers admitted under the program, (3) whether payments equivalent to Social Security and unemployment taxes (FICA and FUTA) should be made by employers of "N" workers, and, if so, what use should be made of these funds, (4) the duration and manner of recruitment for U.S. workers which should be required, (5) whether "N" workers which should be contractually restricted to employment with specific employers, (6) whether current labor standards offer adequate protection for domestic and foreign agricultural workers, and (7) whether certain geographical regions of the country need special provisions or special programs to meet their needs.

Subsection (c) requires the commission to report to Congress not later than 2 years after the effective date of the "N" program and the transition program (the first day of the seventh month beginning after the date of enactment). The report must include recommendations for improvements in the "N" program, including specific legislative recommendations concerning: (1) the seven issues referred to in the last paragraph above, (2) improving the timeliness of administrative decisions made under the "N" program, (3) removing any current economic disincentives to hiring U.S. workers where temporary foreign agricultural workers have been requested, and (4) improving cooperation amoung government agencies, employer associations, workers, labor unions, and other worker associations, to end the dependence of any industry on a constant supply of temporary foreign agricultural workers.

The Committee intends that the commission report to Congress at that time, which is before the final year of the 3-year transition program, so that any changes in the "N" temporary agricultural worker program may be made before agricultural employers are prohibited from using any of their original undocumented workers, if hired after enactment, which will occur when the transition program expires and the employment of such aliens becomes subject to INA section 274A, added by section 121(a) of the bill.

Subsection (i) provides that the commission shall cease to exist 27 months after the effective date.

TITLE II—LEGALIZATION

Section 201—Legalization Commission

Section 201(a) provides for the establishment of a Select Commission on Legalization to be composed of 9 members appointed by the President—4 from a list of 12 names submitted by the Speaker of the House of Representatives, 4 from a list of 12 names submitted by the President pro tempore of the Senate, and 1 additional member to be Chairman, who need not be selected from either list. The subsection provides that at least five members of the Legalization Commission must be sitting or retired Federal judges, former members of the Select Commission on Immigration and Refugee Policy, former Members of Congress, or former Attorneys General of the United States.

The individuals on each such list submitted to the President, as well as the individual chosen by the President to be Chairman, must support the concept of the legalization program described in section 202. At least seven of the individuals on each list must be sitting or retired Federal judges, former members of the Select Commission on Immigration and Refugee Policy, former Members of Congress, or former Attorneys General of the United States. At least two of the remaining individuals on each list must be representatives of religious organizations, voluntary agencies, civil rights organizations, or organizations representing minority or ethnic groups.

Subsection (b) describes the duties of the Legalization Commission. Such duties will include the monitoring and review of the border patrol and other Federal enforcement programs intended to curtail illegal entry into the United States and violation of the

terms of legal entry, as well as the programs intended to curtail the employment of aliens not authorized to work in the United States. The subsection expressly requires that the Commission monitor and review the amount of resources devoted to such programs and their effectiveness, and provides that the Commission may study ways to improve such effectiveness.

Subsection (c) requires the Legalization Commission to report to Congress on its activities not later than 1 year after the date a majority of its members are first appointed, and at least annually thereafter. Each report must contain a finding of whether certain conditions have been met. Section 202(a) (described in more detail below) provides that the legalization program becomes effective when a finding is made that these conditions have been met, or 3 years after enactment, whichever is earlier. The conditions which must be met include the following: (A) effective enforcement measures have been instituted by the Federal Government and have adequate resources to curtail illegal immigration (such measures include the penalties for knowing employment, or recruitment or referral for employment, in the United States of unauthorized aliens, as provided in the new INA section 274A, added by section 121 of this bill); (B) there is a reasonable likelihood that these measures will continue in effect and will continue to have adequate resources after the legalization program described in section 202; (C) enforcement has become effective enough to prevent the legalization program from serving as a stimulus to further illegal entry.

Section 202—Legalization of status

Section 202(a) gives the Attorney General discretion to adjust the status of certain aliens to that of aliens lawfully admitted for temporary residence if they apply within 12 months of the date designated by the Attorney General as the beginning of the application period. Such date must be no later than 90 days after the effective date of the program, which is the date the Legalization Commission makes the finding referred to in section 202, or 3 years after enactment, whichever is earlier.

In order to qualify for such temporary resident status, an alien must show that either (i) he arrived in the United States before January 1, 1980, and has continuously resided in the United States in an unlawful status since such date, or (ii) he is a "special Cuban or Haitian entrant" (described below) and has continuously resided in the United States since December 31, 1980. An alien who entered the United States as a nonimmigrant must show either that his period of authorized stay expired before January 1, 1980, through the passage of time, or that his unlawful status was known to the Government as of that date.

Any alien applying for such temporary resident status must also show that he has been physically present in the United States continuously since the date of enactment. Finally, the alien must establish that he is otherwise admissible as an immigrant. He must show that he is not excludable under INA section 212, unless, pursuant to subsection (d) of this bill (see below), such ground of exclusion does not apply or is waived by the Attorney General; that he has not been convicted of any felony (crime punishable at the time of conviction by imprisonment for a term of more than 1 year, re-

gardless of the term such alien actually served, if any) or three or more misdemeanors (crimes each of which was punishable at the time of conviction by imprisonment for a term of 1 year or less, regardless of the term such alien actually served, if any) committed in the United States; that he has not assisted in the persecution of any person on account of race, religion, nationality, or membership in a particular social group, or political opinion; and that he is registered or registering under the Military Selective Service Act, if required to be so registered.

Subsection (a) defines "special Cuban or Haitian entrant" to include:

(1) Two categories of Cuban nationals: (a) those who on December 31, 1980, had an application for asylum pending with the INS, and (b) those who arrived in the United States and presented themselves for inspection between April 20, 1980, and January 1, 1981, and were physically present on December 31, 1980; and

(2) Three categories of Haitian nationals: (a) those who on December 31, 1980, had an application for asylum pending with the INS, (b) those who on December 31, 1980, were the subject of exclusion or deportation proceedings, including those who on that date were under an order of exclusion and deportation or an order of deportation which had not yet been executed, and (c) those who before December 31, 1980, were paroled into the United States under INA section 212(d)(5) or granted voluntary departure, and were physically present in the United States on that December 31, 1980.

Any alien who has at any time been a nonimmigrant exchange alien as defined in INA section 101(a)(15), must show that the 2-year foreign residence requirement of INA section 212(e) has been satisfied or waived.

Extended voluntary departure is not a legal nonimmigrant status. All aliens granted voluntary departure or extended voluntary departure prior to January 1, 1980, will be eligible for legalization if otherwise admissible (as discussed above), and if they did not later receive a legal status.

Subsection (b) gives the Attorney General discretion to adjust the status of certain aliens previously adjusted to lawful temporary resident status pursuant to subsection (a) to that of aliens lawfully admitted for permanent resident status. In order to qualify, an alien must apply during the 12-month period beginning 30 months after the alien received lawful temporary resident status, and must show that he has continuously resided in the United States since being granted such temporary resident status. Certain brief and casual trips abroad during the period of such temporary status may be permitted by the Attorney General if determined to be consistent with an intention to adjust to lawful permanent resident status. The alien must also show that he is otherwise admissible as an immigrant (see discussion in last paragraph above, in connection with applications for lawful temporary resident status). Finally, the alien must show that he either (a) has the ability to read, write, and speak words in ordinary usage in the English language, and the knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States, which is required before aliens may be naturalized as citi-

zens of the United States, or (b) is satisfactorily pursuing a course of study, approved by the Attorney General, to achieve such ability, knowledge, and understanding.

Subsection (b) also provides that any temporary resident status granted to an alien pursuant to subsection (a) shall terminate after 42 months unless such alien has filed an application for adjustment of status to permanent resident status as provided in subsection (b) and such application has not been denied.

Subsection (c) provides that an application for lawful temporary resident status under subsection (a) may be filed either with the Attorney General or with a "qualified designated entity," which is an organization or State or local government designated by the Attorney General as qualified for the purpose of this section. Each qualified designated entity must agree to forward applications to the Attorney General if the applicant consents, but not to do so if the applicant withholds consent. The purpose of this provision is to assure applicants that they may apply to such entities without fearing that their applications will be forwarded to the INS even if in the view of such entities they do not qualify for legalization.

Subsection (c) also provides that the Attorney General shall prescribe an application fee of at least $100 to meet the costs of the legalization program. The figure is based on the cost of obtaining a "green card," and the experience with the legalization program in the Virgin Islands. The subsection also provides that these fees shall be collected and placed in a separate account and shall be available without fiscal year limitations to cover administrative expenses in connection with the review of applications filed under this section. The Committee intends that the Federal administrative costs of the legalization program be in large part financed by such fees.

Subsection (d) provides that certain grounds of exclusion set forth in INA section 212(a) shall not apply to applicants for legalization, specifically those in paragraphs (14) (labor certification requirement), (20) and (21) (relating to lack of proper documentation), (25) (relating to illiteracy), and (32) (requirements for certain graduates of unaccredited medical schools). Other grounds may be waived by the Attorney General for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, except paragraphs (9) and (10) (relating to certain criminals); (23) (relating to drug offenses), except as it relates to a single offense of simple possession of 30 grams or less of marijuana; (27), (28), and (29) (relating to national security and membership in certain organizations); and (33) (relating to those who assisted in persecutions by Nazis). In addition, the Attorney General may not, in connection with applications for adjustment from temporary resident status to permanent status pursuant to section 202(b) of this bill, waive paragraph (15) (relating to aliens likely to become public charges). Furthermore, the Committee intends that waivers of INA section 212(a)(15) in connection with applications for temporary resident status be granted only in unusual circumstances involving extreme hardship. Finally, the Committee wishes to state that although it is aware that the State Department and INS have interpreted "public charge" to exclude persons receiving assistance through such pro-

grams as "food stamps" and "rent subsidies," it does not concur with this interpretation.

Subsection (e) provides that the Attorney General may not deport an alien who, during the application period for temporary legalization, submits an application for such legalization which establishes a prima face case of eligibility, until a final administrative determination has been made. This subsection also provides that the Attorney General must grant such alien the authorization to work in the United States until such determination has been made.

Subsection (f) limits judicial and administrative review. A legalization program of the magnitude provided for in this section of the bill is unique in history. The program will provide a substantial benefit to large numbers of persons throughout the United States who are now unknown to government authorities. A major managerial effort will be required to review the applications and assure that applicants qualified to be legalized will actually receive this benefit and that other applicants will not. The Committee is concerned that efforts will be made, on behalf of many persons who are ineligible for the legalization program, to delay the final determinations of their applications. This would prevent not only their own deportation but the expeditious operation of the program for others.

It is for the purpose of helping to insure reasonably prompt final determinations that subsection (f) provides that there will be no judicial review of a decision or determination made with respect to the legalization program. Moreover, an alien denied adjustment of status under the legalization program may not raise a claim concerning such adjustment in any proceeding of the United States or any State involving the status of such alien. Subsection (f) also provides that there may be no administrative review of a decision or determination made with respect to the legalization program, except that which the Attorney General is required to establish, namely, a single level of administrative appellate review of final determinations concerning applications for legalization.

Subsection (g) provides in part that the continuous residence and physical presence requirements of the legalization program must be established through documents, with independent corroboration of the relevant information in such documents. Such documents must be employment related if available to the alien. The Committee realizes that some applicants may not have employment-related documents, for example many alien spouses, children, and students.

Subsection (h) provides that, with the exception of "special Cuban and Haitian entrants," aliens granted the temporary resident status under the legalization program will not be eligible for 6 years (including the initial several years after they have been granted permanent resident status) for programs of federally funded financial assistance granted on the basis of financial need. During the same period, State or local governments are authorized to provide that such aliens are ineligible for State or local welfare assistance programs. Adjustments of status under this section will not affect the provision of assistance under section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122).

In addition, subsection (h) expressly states that unless otherwise specifically provided by law, an alien in such temporary resident status shall not be considered, for purposes of any State or local law which provides for welfare assistance, to be permanently residing in the United States under color of law.

Subsection (i) in part provides that the retirement or retainer pay of a member or former member of the Armed Forces or the annuity of a retired employee of the Federal Government shall not be reduced during a period of up to 18 months while such individual is temporarily employed by the INS to assist in the administration of the legalization program.

Subsection (j) provides that section 1 of Public Law 89–739, which authorizes the Attorney General to adjust the status of certain Cuban nationals to lawful permanent resident, shall not apply to aliens who are first inspected and admitted or paroled into the United States after the date of enactment of this bill.

Finally, the Committee would like to discuss a question which has been posed several times during the consideration of S. 1200: What will happen to illegal aliens who satisfy the residence and other requirements for legalization but who are apprehended by the INS before that date? The answer is that such illegal aliens will be treated as they are at the present time. If they are apprehended by the INS, they will be offered the choice of immediately leaving the United States or being placed in deportation proceedings. The Committee notes that in the last fiscal year for which complete data are available, 1983, over half of the interior apprehensions were of illegal aliens who had been present in the United States for 1 year or less—not long enough to satisfy the residence requirement for legalization. The proportion which this group represents of the total illegal population is unknown.

The additional funds authorized by S. 1200 will enable INS to increase the level of interior investigators and interior border patrol officers. These personnel will be assigned primarily to the effort to enforce the bill's prohibition of knowing employment of illegal aliens, not to engage in residential searches for illegal aliens.

The increased funds authorized by the bill will not enable the INS to conduct massive residential area "sweeps" in an effort to deport illegal aliens. This is consistent with the intention of the Committee and with the policy of the administration as it has been stated to the Committee.

The Committee emphasizes that the report referred to in section 202(a)(1)(C) of the bill should be made as soon as the conditions set forth in section 201(c)(3) are met, without regard to the automatic legalization provision. When enforcement reaches the required level of effectiveness, as found by the Commission, or 3 years after enactment, whichever occurs first, the legalization program will go into effect. Applications for legalization will be accepted within 90 days thereafter. An alien who has submitted an application for legalization during the authorized application period, if such application establishes a prima facie case of eligibility for legalization, may not be deported and must be granted authorization to work in the United States.

Section 203—State legalization impact-assistance grants

The Committee notes the concern expressed by State and local governments regarding the potential fiscal impact arising from participation in public assistance programs by the legalized population. The Committee believes that legalization is a shared Federal/State responsibility because each level of government both incurs costs and receives revenue because of the presence of illegal aliens. However, it is likely that some State or local governments face a net revenue deficit due to the presence of illegal aliens who are likely to be legalized. Therefore, a program of legalization impact-assistance grants to States has been provided. The Committee wishes to emphasize that the program is not meant to provide "100 percent Federal reimbursement" for the costs incurred by State or local governments, but to offset the reasonably anticipated *net* costs.

Section 203(a) authorizes the appropriation of $600 million for each of 3 fiscal years to provide payments to States, beginning with the fiscal year in which the application period described in section 202(a)(1)(A) ends.

Section 203(b) requires the Secretary of Health and Human Services, in accordance with the authorization, to provide for payment to each State with an approved application for reimbursement of costs resulting from the participation of "eligible legalized aliens" (defined in section 203(i)(3)) in "programs of public assistance" (defined in section 203(i)(2)) for which they were not disqualified under section 202(h) at the time of such participation, or resulting from imprisonment of illegal aliens convicted of a felony.

The subsection provides that payments must be based on a formula established by the Secretary. Such formula must take into account: (i) the number of "eligible legalized aliens" residing in the State in a particular fiscal year, (ii) the ratio of the number of "eligible legalized aliens" in the State to the total number of residents in the State and to the total number of such aliens in all the States in that fiscal year, (iii) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for "eligible legalized aliens" under "programs of public assistance," and (iv) the ratio of the amount of expenditures referred to in clause (iii) in the State to the total amount of such expenditures in all of the States.

Subsection (b) also provides that to the extent that all funds provided in this section are not allotted to States in a particular fiscal year because all States have not qualified or because one or more States have indicated that they do not intend to use, in that fiscal year or the following fiscal year, the full amount allotted to them in that fiscal year, the excess funds shall be allotted to the other qualifying States in proportion to the amounts otherwise allotted to them.

Subsection (c) provides that no State will be eligible for payment in a fiscal year unless the State has filed with the Secretary of Health and Human Services an application for such fiscal year, which contains, among other things, information on the number of "eligible legalized aliens" residing in the State and the likely costs for "programs of public assistance" and for the imprisonment re-

ferred to in subsection (b). Participating States must also transmit to the Secretary a statement of assurances, certifying in part that reimbursement funds will only be used to carry out the purposes described in subsection (d).

Subsection (d) provides that a State may only use such funds (1) to provide assistance to "eligible legalized aliens" under "programs of public assistance" for which such aliens are not disqualified under section 202(h) at the time of such assistance, but only to the extent such assistance is otherwise available to citizens residing in the State, and (2) to pay the cost of imprisonment of aliens described in subsection (b)(1)(B).

Subsection (e) provides that each participating State must submit to the Secretary annual reports on its activities under this section. Subsection (e) also refers to the audit requirements of chapter 75 of title 31 of the United States Code. Each State is required to repay all funds not expended in accordance with the statute.

The subsection also requires the Secretary to report annually to the Congress on activities funded under this section, and transmit a copy of such report to each State. Each State must make copies of the reports and audits required under this section available for public inspection within the State. Finally, subsection (e) provides that the Secretary and the Comptroller General shall have access to certain records related to the assistance granted under this section.

Subsection (g) provides for the enforcement of certain antidiscrimination laws with respect to activities funded in whole or in part under this section.

Subsection (h) requires the Secretary to consult with representatives of State and local governments in establishing the regulations and guidelines to implement this section.

Subsection (i) defines "programs of public assistance" to include programs which (A) provide for cash, medical, or other assistance (as defined by the Secretary) intended to meet the basic subsistence or health needs of individuals or required in the interest of public health, (B) are generally available to needy individuals residing in the State or locality, and (C) receive funding from units of State or local government.

The term "eligible legalized alien" is defined to be an alien who has been granted lawful resident status under section 202(a) but only during the 6-year period beginning on the date the alien was granted such status.

TITLE III—OTHER CHANGES IN THE IMMIGRATION LAW

Section 301—Change in colonial quota

Section 301 increases the number of visas available for colonies from 600 to 3,000 per year.

In recent history, a number of former colonies have obtained independence, and have thereby become eligible for the 20,000 per country annual ceiling on numerically limited immigration. The few remaining colonies experience severe backlogs in visa issuance because of the small allocations of visas. The Committee is of the opinion that an increase in visa allocation for colonies will benefit

general immigration policy and will not significantly reduce the visas available for other areas of the world.

Section 302—Visa waiver for certain visitors

Subsection (a) creates a new section 217 of the INA. Subsection (a) of the new INA section authorizes the Attorney General and the Secretary of State jointly to establish a 3-year pilot program for the admission without a visa of certain foreign tourists and business visitors. The program would permit the entry of an alien for no more than 90 days, and would only apply to an alien who is a national of one of the eight countries selected by the Secretary of State and the Attorney General from among those which extend or agree to extend reciprocal privileges to U.S. citizens and which satisfy certain other criteria (see below). Before admission to the United States the alien would be required to complete a new immigration form and a waiver of certain review and appeal rights. The alien would also be required to have a round-trip, nonrefundable, nontransferable, open-dated transportation ticket issued by a qualified carrier (see below). No alien could be admitted under the program unless such alien has been determined not to represent a threat to the welfare, safety, or security of the United States. Any alien who previously was admitted under this section but who failed to comply with the conditions of any such previous admission would not qualify. Furthermore, all aliens seeking admission under this section would be subject to the exclusion provisions of INA section 212(a).

Subsection (b) of the new INA section 217 provides that the program may not be put into operation until 30 days after the Attorney General has certified to Congress that an automated data arrival and departure system is operational and effective, and a visa waiver form has been produced. The automated system is to be developed and established by the Attorney General in cooperation with the Secretary of State, for the purpose of screening and monitoring the arrival and departure of foreign visitors receiving a visa waiver under the pilot program. The subsection provides that the visa waiver form shall be developed by the Attorney General and must be consistent with the automated control system. The form must contain a summary description of the conditions for excluding nonimmigrants under INA section 212(a) and under the pilot program, describe the terms and conditions of entry under the visa waiver program and the consequences of failure to comply, and include questions concerning any previous denial of a visa application.

An alien may not receive a visa waiver under the pilot program unless such alien has waived any right to review or appeal of an immigration officer's determination of such alien's admissibility at the port of entry, or to contest, other than on the basis of an application for asylum, any deportation action against such alien.

Subsection (c) of the new INA section provides that a country may not qualify as a pilot program country for the "initial period" (see below) unless in the 2 previous full fiscal years the average number of nonimmigrant visitor visa refusals constituted less than 2 percent of the total number of nonimmigrant visitor visas issued or denied to nationals of the country and the average number of

such refusals in either of the 2 previous full fiscal years was less than 2.5 percent of such total number. The "initial period" is the period beginning after the required 30-day period for notice to Congress and ending after the first fiscal year beginning thereafter.

For each fiscal year after the "initial period," new countries must meet this test. Countries previously designated will continue to qualify for the program unless in the prior fiscal year the sum of (i) the number of nationals of that country who were excluded from admission or withdrew their application for admission as nonimmigrant visitors, and (ii) the number of nationals of that country who were admitted as nonimmigrant visitors and violated the terms of such admission, exceeded 2 percent of the total number of nationals of that country applying for admission as nonimmigrant visitors to the United States.

Subsection (d) of the new INA section 217 provides that the required round-trip ticket referred to above must be issued by a carrier which has agreed (i) to indemnify the United States against any costs of transporting from the United States certain nonimmigrant visitors who have received visa waivers, namely those who are refused admission or who unlawfully remain in the United States after the 90-day period, and (ii) to submit daily any immigration forms received with respect to nonimmigrant visitors who have been provided a visa waiver. The Attorney General is authorized to terminate such an agreement with 5 days notice if a carrier fails to fulfill the terms of the agreement.

Section 302(b) amends section 214(a) of the INA to prohibit extension of period of stay for visa waiver visitors.

Section 302(c) amends INA section 245(c) to prohibit visa waiver visitors from adjusting to permanent resident status.

Section 302(d) amends INA section 248 to prohibit visa waiver visitors from adjusting to another nonimmigrant status.

Section 303—G–iv special immigrants

Section 303 adds a new category of "special immigrant" to those already included in INA section 101(a)(27). This new category would include, first, an immigrant who is the unmarried son or daughter of an officer or employee, or former officer or employee, of an international organization such as the United Nations or World Bank, if such immigrant (i) while in the status of a nonimmigrant under INA section 101(a)(15)(G)(iv) or 101(a)(15)(O) has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment to special immigrant status, and for at least 7 years (in the aggregate) between the ages of 5 and 21, and (ii) applies no later than his 25th birthday or 6 months after enactment, whichever is later.

Special immigrant status is also provided to the surviving spouse of an officer or employee of such an international organization who (i) while in G–iv or O status has resided and been physically present in the United States as such a spouse for periods totaling at least half of the 7-year period prior to the date application for the visa or for adjustment to special immigrant status is made, and for at least 15 years (in the aggregate) before the death of his or

her spouse, and (ii) applies no later than 6 months after the spouse's death or 6 months after enactment, whichever is later.

Finally, special immigrant status is provided to a retired officer or employee of such an international organization who (i) while in G–iv or O status has resided and been physically present in the United States for periods totaling at least half of the 7-year period prior to the date application for the visa or for adjustment to special immigrant status is made, and for at least 15 years (in the aggregate) before the date of his retirement from such organization, and (ii) applies no later than 6 months after such retirement or 6 months after enactment, whichever is later. The spouse of such a retired officer or employee who receives special immigrant status, if such spouse is accompanying or intending to join such retired officer or employee as a member of his immediate family, also will receive special immigrant status.

With respect to the "physically present" requirement, the Committee intends that an absence caused by the need to inspect overseas projects or a customary leave shall not be subtracted from the required aggregate period of physical presence, provided that the immigrant continues to reside in the United States during such absences and continues to have his duty station in the United States and, with respect to an immigrant who is the unmarried son or daughter of an officer or employee, provided that the unmarried son or daughter is not enrolled in school outside the United States during such absences.

Section 303(b) amends sections 101(a)(15) of the INA to create a new "O" nonimmigrant status for (i) parents of a child who is given special immigrant status, while the qualifying child remains a child (defined in INA section 101(b)(1)), (ii) the other children of such parents, and (iii) the children of surviving spouses or retired officers or employees (or their spouses) given special immigrant status under this section. The Committee intends that parents receiving such nonimmigrant status will receive work authorization.

Title IV—Reports

Section 401—Triennial comprehensive report on immigration

Subsection (a) requires the President to transmit to Congress not later than January 1, 1987, and not later than January 1 of every third year thereafter, a comprehensive immigration impact report.

Subsection (b) provides that each report shall include with respect to the relevant period (described in subsection (c)): (1) the number and classification of aliens admitted, paroled, or granted asylum, (2) an estimate of the aliens who entered without visas or became deportable under INA section 241, and (3) a description of the impact of immigrants, refugees, asylees, and parolees.

Subsection (c) provides that the information contained in each report shall be described for the preceding 3-year period and projected for the succeeding 5-year period.

Subsection (d) provides that the President may also include recommendations on changes in numerical limitations or other policies bearing on the admission and entry of aliens.

Section 402—Reports on unauthorized alien employment and discrimination in employment

Subsection (a) requires the President to transmit to Congress annual reports on the implementation of INA section 274A, added by section 121(a) of the bill, which makes it unlawful knowingly to employ or for a fee to recruit or refer illegal aliens. Each report must include: (1) an analysis of the adequacy of the employment verification system, (2) a description of the status of the development and implementation of changes in that system, and (3) an analysis of the impact of the enforcement of the new INA section 274A on the employment, wages, and working conditions of U.S. workers and the U.S. economy, and on the number of illegal entrants or visa abusers.

Subsection (b) requires the Comptroller General to prepare a report each year for 5 years, beginning 1 year after enactment. The report must describe the results of a review of the implementation and enforcement of new INA section 274A during the preceding year, including whether such provisions have been carried out satisfactorily, whether a pattern of discrimination on the basis of national origin has resulted against U.S. citizens or aliens authorized to work in the United States, and whether an unnecessary regulatory burden has been created for employers hiring such workers. The report must include a specific determination of whether such pattern of discrimination has resulted. If it has, the report must include a description of the scope of the discrimination and may include recommendations for legislation. Such report must be submitted to Congress and to the task force described in subsection (c).

Subsection (c) requires the Attorney General, jointly with the Chairman of the U.S. Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, to establish a task force to review each such report of the Comptroller General. If such report contains a determination that a pattern of discrimination on the basis of national origin has resulted, the task force is required to transmit to Congress recommendations for legislation to deter or remedy such discrimination, taking into consideration any recommendations in the report itself. Subsection (c) also requires the House and Senate Judiciary Committees to hold hearings within 60 days of receiving a report from such task force.

Section 403—Report on visa waiver pilot program

Subsection (a) requires the Attorney General and the Secretary of State jointly to monitor the pilot visa waiver program established under new INA section 217, added by section 302(a) of the bill, and to report to Congress no later than 2 years after the beginning of the program.

Subsection (b) provides that the report must include an evaluation of the program, including its impact on the control of alien visitors to the United States, on consular operations in the designated countries and in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and on the U.S. tourist industry. The report must also include recommendations on whether to extend the duration

of the program and on whether to increase the number of countries which may be designated.

Section 404—Presidential reports on any legalization program

Subsection (a) requires the President to transmit to Congress two reports after the legalization program has been established under section 202.

Subsection (b) provides that the first report shall contain a description of the legalized population, including their geographical origins and manner of entry into the United States, demographic characteristics, and general profile. This report is required no later than 18 months after the end of the application period for lawful temporary resident status under the program.

Subsection (c) provides that the second report must include a description of (1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States, (2) the patterns of employment of the legalized population, and (3) the participation of legalized aliens in social service programs. This second report is required no later than 3 years after the transmittal of the first report.

Section 405—Report on the Immigration and Naturalization Service

This section requires the Attorney General within 90 days after enactment to prepare and transmit to the Congress a report describing the type of equipment and personnel resources required to improve the capability of the INS with respect to service and enforcement activities.

TITLE V—COMMISSION FOR THE STUDY OF COOPERATIVE UNITED STATES-MEXICAN ENDEAVORS TO IMPROVE ECONOMIC CONDITIONS

Section 501—Commission

Subsection (a) establishes a Commission for the Study of Cooperative U.S.-Mexican Endeavors to Improve Economic Conditions. The Commission is to be composed of 12 members, 4 Members of the House of Representatives, to be appointed by the Speaker, upon recommendation of the majority leader and the minority leader; 4 members of the Senate, to be appointed by the President pro tempore of the Senate, upon the recommendation of the majority leader and the minority leader; and 4 members to be appointed by the President, not more than 2 from any one political party. Members will serve for the life of the Commission (see below). The Chairman of the Commission shall be elected by the members, by majority vote.

Subsection (b) requires the Commission to examine how the United States and Mexico can work together to improve the economy of Mexico and the economy of the United States.

Subsection (c) requires the Commission, within 180 days after the appointment of the members, to prepare and transmit to the President and to Congress a report describing what steps the United States should take to work with Mexico to improve economic conditions in the two countries.

Subsection (e) describes the method of compensation of members, meetings, staff, authority of the Commission, authorization of appropriation, and quorum requirement.

Subsection (f) provides that the Commission shall terminate on the date on which the report referred to in subsection (c) is due, except that the Commission may continue to function for up to 30 days in order to conclude its activities.

VI. COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act (2 U.S.C. 190(j)), the Committee estimates that there will be added costs due to this act and adopts the cost estimate prepared by the Congressional Budget Office (CBO), set forth below.

On August 20, 1985, the following opinion was received from CBO:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 20, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1200, the Immigration Reform and Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1200.
2. Bill title: Immigration Reform and Control Act of 1985.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, July 30, 1985.
4. Bill purpose: S. 1200 makes some major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A authorizes the appropriation of $840 million for 1987 and $830 million for 1988 for enforcement and service activities of the Immigration and Naturalization Service (INS), and such sums as may be necessary for the Wage and Hour Division and the Office of Federal Contract Compliance Programs in the Department of Labor. It also allows the Attorney General to impose fees on aliens, reflecting the cost of their use of border facilities. Part B clarifies law regarding harboring or transporting of an unauthorized alien to or within the United States; seizure and forfeiture procedures regarding vehicles or property used for the purpose of violating immigration law; and fraud or misuse of visas, permits or other documents. Part C makes it unlawful to employ unauthorized aliens and outlines requirements for employers to verify good faith attempts at compliance with this

law; authorizes Presidential monitoring and improvements in the verification system; directs the Attorney General to establish enforcement procedures; provides a new nonimmigrant classification for temporary agricultural workers; creates a new program for admission of temporary agricultural workers (including an authorization for the Secretary of Labor to establish a user fee to recover costs of processing applications for certification to import temporary agricultural workers); and directs establishment of an agricultural labor transition program during the three-year period beginning in the seventh month following enactment of this bill. Part C also establishes a commission to study and review the temporary agricultural worker program and the agricultural labor transition program during the 27 months following enactment.

Title II of the bill governs the legalization of unauthorized aliens already in the country. It establishes a Legalization Commission, which would be required to report at least annually on whether effective enforcement measures had been instituted and backed up by adequate resources, so as to curtail entry and stay of unauthorized aliens. Legalization could begin only after the commission found that more effective enforcement measures had been instituted with adequate resources or 3 years after enactment, whichever is earlier. The Attorney General is then empowered to adjust the status of unauthorized aliens to that of lawfully admitted aliens eligible for temporary residence if they apply, meet certain conditions, can establish that they entered the United States prior to January 1, 1980, and have been residing here continuously since then. After 2½ years in temporary status, the Attorney General can adjust their status to that of permanent resident. In addition, Title II precludes the aliens from receiving Federal assistance programs based on "financial need" for a period of 6 years from their date of legalization. At the same time, it authorizes the appropriation of funds for grants to States to cover their public assistance costs for the legalized aliens and their imprisonment costs for unauthorized aliens. A sum of $600 million is authorized for this purpose in each of 3 fiscal years, beginning with the year in which applications for legalization would end. Further, the bill requires the Attorney General to prescribe a fee of at least $100 for each application for adjustment of status filed under the provisions of this title. Funds received from these application fees are to be deposited into a separate account, to be available only to cover administrative expenses incurred in reviewing the applications filed under this section.

Title III of the bill makes other changes to immigration law. This title raises the quota of immigrant visas available to residents of dependent areas of foreign states; authorizes the establishment of a visa waiver pilot program; and amends the immigration laws regarding G–iv special immigrants.

Title IV requires the President, the Attorney General, and the U.S. Comptroller General to submit a number of reports to Congressional committees within set periods of time. Title V establishes a commission to study cooperative United States-Mexican endeavors to improve economic conditions.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Direct spending provisions:					
Required budget authority: [1]					
Function 570				(1)	(1)
Function 600				(1)	(1)
Function 650				(1)	(1)
Estimated outlays:					
Function 570				(1)	5
Function 600				(1)	15
Function 650				(1)	10
Amounts subject to appropriation action:					
Estimated authorization level:					
Function 350		3	3	3	3
Function 500		51	53	53	55
Function 600				600	600
Function 750		238	218	130	135
Estimated outlays:					
Function 350		3	3	3	3
Function 500		51	53	53	55
Function 600				80	140
Function 750		110	135	325	150
Estimated offsetting receipts:					
Function 750	−25	−50	−50	−50	−50
Total spending (net of receipts):					
Estimated authorization level/required budget authority	−25	242	224	736	743
Estimated outlays	−25	114	141	411	328
Estimated Revenues		15	15	70	
Net budget impact: Estimated net increase or decrease (−) in the deficit	−25	99	126	341	328

[1] Less than $2.5 million.

Basis of Estimate:

Function 750. The table below shows the estimated budget authority and outlays required to perform the tasks required by the bill that fall under function 750 (Administration of Justice).

ESTIMATED BUDGET IMPACT—FUNCTION 750

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Authorization level:					
Specifically authorized		840	830		
Estimated		4	2	130	135
Less: Baseline		−606	−614		
Less: New offsetting receipts	−25	−50	−50	−50	−50
Net additional authorization	−25	188	168	80	85
Estimated outlays	−25	60	85	275	100

Section 101 of the bill amends the Immigration and Nationality Act to authorize the appropriation of $840 million in fiscal year 1987 and $830 million in fiscal year 1988 for additional inspection and service activities of the Immigration and Naturalization Service (INS). This replaces an authorization for "such sums as may be necessary" currently in law. For the purpose of this estimate, the

existing authorization is represented by the Senate Budget Committee baseline used for the 1986 first budget resolution, and the impact of the bill is shown as the authorized increase over the baseline level. The increased authorization level for the INS specified in the bill is meant to provide funds for increased enforcement activities, including enforcement of employer sanctions, and additional processing of applications and adjudication primarily resulting from the legalization and temporary worker programs outlined by the bill. Assuming that the full amounts authorized are appropriated and that applications for legalization are all received in fiscal year 1989, CBO estimates that the increase in outlays resulting from this authorization language would be approximately $108 million in fiscal year 1987, $133 million in 1988, $194 million in 1989, and $15 million in 1990. For 1989 and 1990, CBO has estimated the costs of activities required by the bill over and above baseline levels. It is assumed that the enforcement and adjudication activity levels after 1988 would remain relatively constant at about the 1988 level. Thus, CBO estimates additional costs of about $130 million in fiscal year 1989 and $135 million in 1990. Subsequently, in 1991 and 1992, additional funds would be needed for the processing of applications for permanent residency from those who were made temporary residents in 1989. Some of these funds would be available from monies collected in fiscal year 1989 (during the period assumed for applications for temporary status); however, CBO anticipates that additional appropriations would be necessary for this purpose.

Section 102 of the bill authorizes the Attorney General, in consultation with the Secretary of State, to impose fees on aliens entering the United States at border facilities to recover the cost of their use of the facilities. Based on information provided by the INS, CBO estimates that an average of 200 million aliens will enter the United States by land, sea, or air in each of the next 5 years, at a total cost to the INS of about $50 million a year. The INS would be able to recover this cost by imposing a fee of about $0.25 per entry.

Part B of title I increases penalties for immigration-related violations and part C outlines employer penalties for illegal employment of unauthorized aliens. Part C also directs the President to monitor and evaluate the degree to which the employment verification system outlined by the bill is effective and authorizes the President to require changes to the system, as necessary. This section authorizes the President to undertake a demonstration project over 3 years and subsequently to require changes to the system, if the current method were found to be ineffective. Such change could involve establishing a new system to determine employment eligibility in the United States. The new system could involve the use of tamper-resistant Social Security cards or the presentation of a new form of identification. The President would have to report such a proposed change to the Congress 2 years prior to implementation. Thus, CBO anticipates that a new system would not be implemented prior to fiscal year 1991. (Implementation of such a system could cost more than $500 million per year.)

Title II of the bill establishes and authorizes funds for a Select Commission on Legalization beginning in fiscal year 1987. The com-

mission would review activities of the INS in controlling illegal entry of aliens into the United States and in eliminating illegal employment of unauthorized aliens, and report to the Congress within 1 year of appointment of a majority of members of the commission and annually thereafter. Based on information from INS and on the cost of similar commissions, CBO estimates that enactment of this section would cost $2 million in fiscal year 1987 and $2 million in 1988. The costs falling in function 750 associated with legalization are included in the specific authorization levels in title I. They are estimated to be about $20 million in fiscal year 1988, $190 million in 1989, and $15 million in 1990.

Title IV requires the preparation of several reports: a triennial comprehensive immigration-impact report; an annual presidential report on the system designed to prevent unlawful employment of aliens; and an annual GAO report on the impact of the employer sanction programs on discrimination in hiring and the regulatory burden of employers. In addition, the INS is to report on resources needed not later than 90 days after enactment of the bill. Based on information from the INS, the cost of preparation of these reports would be a total of approximately $2 million in 1986, $12 million in 1987, $10 million in 1988, $8 million in 1989, and $6 million in 1990. Title V establishes a commission beginning in fiscal year 1987, to report on possible United States-Mexican joint endeavors to improve economic conditions. Outlays of the commission are expected to be about $2 million in fiscal year 1987.

Functions 500 and 350. Several provisions of the bill would result in Federal outlays in functions 500 (Education, Training, Employment, and Social Services) and 350 (Agriculture). CBO estimates that additional outlays would be $54 million in 1987, rising to $58 million by 1990.

The bill authorizes such sums as may be necessary to enable the Department of Labor (DOL) to make determinations and issue certifications under the H-2 worker program. The H-2 worker program allows foreign workers to enter the United States temporarily to work in jobs which employers cannot find domestic workers to fill. In making this estimate, it is assumed that the combination of employer sanctions and a strengthened INS would act as effective deterrents to the hiring of illegals to perform agricultural labor. It is further assumed that the H-2 worker program would expand to fill the otherwise unmet demand for agricultural labor, thereby increasing the administrative costs of DOL.

According to the Department of Agriculture (USDA), if employer sanctions were effectively enforced, growers would need between 250,000 and 500,000 guest workers. The DOL is currently receiving about 800 applications per year for H-2 agricultural workers, and each application requests an average of 25 workers. Administrative costs are about $3 million in 1985, or $3,750 per application, for the agricultural part of the H-2 worker program, and they are estimated to increase by about 5 percent per year.

Currently, those illegal immigrants who work in agriculture are located primarily in the West and Southwest, while most H-2 workers are employed in the East. Since western agricultural concerns tend to be far larger than eastern, it is assumed that future applications would be for about 40 workers on average.

51-567 O - 85 - 3

Using a projected cost per application of about $4,100, CBO estimates that administrative costs would be $39 million in 1987. This figure is based on an estimated 9,375 applications: 375,000 guest workers—the midpoint of the estimated range noted above—and an estimated 40 workers per application. Because the bill would establish a transitional labor program which would permit growers to fill all their labor needs by hiring illegals for 1 year, no additional costs would be incurred until 1987.

The bill also authorizes such sums as may be necessary for the USDA to provide expertise and assistance to the DOL with regard to the temporary agricultural worker program. These costs, including the cost of producing a quarterly farm wage rate survey, are estimated to be about $3 million annually.

In addition, the bill requires the Federal Government to establish a program to (a) recruit domestic workers to perform services that might otherwise be performed by temporary foreign nonimmigrant laborers, and (b) monitor the terms and conditions under which temporary agricultural workers are employed in the United States. A total of $10 million per year beginning in 1987 is authorized for these purposes. The bill also authorizes such sums as may be necessary to fund the establishment of a 2-year commission to study and review the temporary agricultural worker program and the agricultural labor transition program, resulting in estimated costs of $2 million in 1987 and 1988.

The estimated budget impact of S. 1200 in functions 500 and 350 is summarized in the following table.

ESTIMATED BUDGET IMPACT—FUNCTIONS 500 AND 350

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Function 500:					
H–2 worker program:					
Estimated authorization level		39	41	43	45
Estimated outlays		39	41	43	45
Other:					
Estimated authorization level		12	12	10	10
Estimated outlays		12	12	10	10
Function 350:					
Estimated authorization level		3	3	3	3
Estimated outlays		3	3	3	3

Functions 570, 600 and 650. Title II ("Legalization") would increase Federal outlays in functions 570 (Medicare), 600 (Income Security), and 650 (Social Security). First, title II authorizes the appropriation of funds to reimburse States for costs of public assistance provided to eligible legalized aliens and for the imprisonment costs of unauthorized aliens. A sum of $600 million is authorized in each of 3 fiscal years, beginning with the year in which applications for legalization would end, which would be fiscal year 1989 under CBO's assumptions.

Second, legalization of unauthorized aliens would entitle the aliens to receive benefits from a number of Federal assistance programs for which they are currently ineligible. Toward the end of

the projection period shown in this estimate—1986 to 1990—additional costs would result in the Unemployment Compensation, Disability Insurance, and Medicare programs. Assuming full compliance with the law, no additional costs would result during this period in Federal assistance programs based on "financial need" (Aid to Families with Dependent Children, Food Stamps, Medicaid, and Supplemental Security Income), because legalized aliens would be precluded from receiving benefits for 6 years from their date of legalization. Based on CBO assumptions concerning the timing of the application period, no alien could receive benefits from these programs based on financial need until fiscal year 1995.

Additional outlays in functions 570, 600, and 650 as a result of legalizing unauthorized aliens are estimated to be $80 million in 1989 and $170 million in 1990. They are shown in the following table:

ESTIMATED BUDGET IMPACT—FUNCTIONS 570, 600, AND 650

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Unemployment compensation (Function 600):					
Required budget authority					
Estimated outlays				(1)	15
Disability insurance (Function 650):					
Required budget authority				(1)	(1)
Estimated outlays				(1)	10
Medicare (Function 570):					
Required budget authority				(1)	(1)
Estimated outlays				(1)	5
Grants to States (Function 600):					
Authorization level				600	600
Estimated outlays				80	140
Subtotal: Direct spending provisions:					
Required budget authority				(1)	(1)
Estimated outlays				(1)	30
Subtotal: Amounts subject to appropriation action:					
Authorization level				600	600
Estimated outlays				80	140
Total Functions 570, 600, and 650:					
Authorization level/required budget authority				600	600
Estimated outlays				80	170

[1] Less than $2.5 million.

This estimate is very uncertain, particularly because of the four problems discussed below. First, this estimate includes Federal outlays for the grants to States that are large enough to cover the full estimated costs to States for public assistance to the legalized aliens and for imprisonment costs. Less than the full costs, however, might be appropriated. Second, the timing of legalization is unclear because it depends on a finding by the Legalization Commission, established under title II, that more effective enforcement measures had been instituted with adequate resources to curtail the entry and stay of unauthorized aliens. The CBO estimates are based on the assumption that the commission would find toward the end of its second year that legalization could begin. Thus, the application period for legalization is assumed to begin on October

1, 1988 and end on September 30, 1989, in accordance with the 12-month application period specified in the bill. As a result, outlays would not begin until fiscal year 1989.

Third, this estimate depends importantly on the number of unauthorized aliens in the United States, for which little hard evidence exists. It has been generally accepted that there were 3 to 6 million unauthorized aliens in the United States in the late 1970s. The CBO estimate uses 4.5 million aliens in 1977, the midpoint of the range. Even less is known about how the numbers of unauthorized aliens in the United States may have changed in recent years, although anecdotal evidence indicates there has been some net inflow. Based on conversations with persons knowledgeable about the unauthorized alien population, CBO assumes a net increase of 150,000 in each year beginning in 1980. By 1986, then, CBO assumes that there will be 5.6 million unauthorized aliens in the United States.

Of the 5.6 million unauthorized aliens, CBO estimates that 17 percent have resided continuously in the United States since January 1, 1980, making them eligible for legalization under this bill. This figure is based on percentages from Immigration and Naturalization Service (INS) studies, which have been adjusted upward to reflect the assumption that some unauthorized aliens are aware of the possibility of legalization because of legislative activity in recent years. Among those eligible, we assume—again based on conversations with experts—that approximately 60 percent would apply for and be granted resident status. The resulting number of unauthorized aliens who would be granted resident status is estimated to be 565,000.

Finally, the number of legalized aliens who would qualify for government assistance programs is uncertain. In large part, this reflects a lack of data on the economic and demographic characteristics of unauthorized aliens—for example, their employment status and wages or their age and marital status. In developing the estimates of numbers of legalized aliens who would receive benefits from government programs, CBO assumes that the unauthorized aliens would have to show at the time of their application for residency that they had not been nor would they be likely to be "public charges," as specified in section 212 of the Immigration and Nationality Act. Thus, at the time the aliens would become residents, they would presumably be working. Over time, however, they could be expected to resemble the U.S. population as to receipt of benefits from entitlement programs. By 1992, CBO assumes that the percentage of unauthorized aliens receiving government benefits would resemble that of the U.S. population for similar age, sex, ethnic origin, and income groupings. In the interim years, CBO assumes that a growing fraction would in fact receive benefits: 5 percent in 1989, 30 percent in 1990, and 75 percent in 1991.

In addition to the general basis of these estimates, each individual program estimate entailed specific procedures and assumptions. The details for each program are discussed below.

The Unemployment Compensation program provides weekly cash benefits to workers who are involuntarily unemployed and who have had at least a moderate amount of work experience during a 1-year period prior to losing their jobs. Under this bill, Unemploy-

ment Compensation costs for newly legalized alien workers are estimated to rise from an insignificant amount in 1989 to $15 million in 1990. This estimate is based on several assumptions for newly legalized alien workers. Consistent with recent labor force data on young Hispanics, CBO assumes that 80 percent of these workers would participate in the labor force, a higher rate than the average of the U.S. population. Because most probably work in service industries, which are less prone to cyclical unemployment, and because even low-wage jobs in this country probably appear attractive when compared to those in the country of origin, CBO assumes that the newly-legalized population would have unemployment rates one percentage point lower than those in effect for the rest of the U.S. population. Further, assuming, as some evidence indicates, that these individuals' earnings are about 60 percent of those of comparable U.S. production or nonsupervisory workers (and assuming a 50 percent wage replacement rate), CBO estimates that the average weekly benefit amount for these workers would be about $105 in 1989, one-fourth lower than that for the remainder of the population.

The Disability Insurance (DI) program covers persons who are totally disabled (whose disability is expected to last at least 12 months or result in death) and who have sufficient work histories in covered employment. Costs in DI of the legalized aliens are estimated to rise from an insignificant amount in 1989 to $10 million in 1990. Because the evidence indicates that unauthorized aliens are relatively young on average, they would be less likely to be disabled than the U.S. population as a whole. Also, because they have been in the United States for relatively short periods of time, they might not qualify for DI, which requires for most workers covered earnings during 20 out of the last 40 calendar quarters. For all of these reasons, their DI recipiency rate would be less than that of the U.S. population; CBO estimates the rate to be about 0.1 percent in 1989, with this rate rising to about 0.4 percent in 1990. Their benefit levels would also be less, reflecting lower than average wages and shorter work histories. The CBO estimates average benefits to be about $4,365 in 1990 for aliens who entered before 1980.

Costs in the Medicare program, which provides health care coverage to the aged and disabled covered by Social Security, would rise slightly beginning in 1989, but would not exceed $5 million through 1990. These costs would be for those aliens who would receive DI.

Grants to States, which would not begin until 1989 (the year the application process is assumed to end), are estimated to cost $80 million in 1989 and $140 million in 1990. Of this total, $10 million in 1989 and $70 million in 1990 would be for public assistance costs—cash and medical—and $70 million in each year would be for costs of imprisoning unauthorized aliens.

Grants for public assistance are based on costs in State and local General Assistance (GA) programs. These programs are fully-funded by States and localities and provide benefits to low-income persons and families who do not qualify for the federally-funded cash welfare programs. GA provides both cash payments and medical coverage. Two groups of aliens would qualify for GA: those who would never be eligible for Federal welfare programs (for example,

low-income working two-parent families with children, and non-aged, non-disabled couples or single persons without children) and those who would be made ineligible for AFDC or SSI by the bill for a period of 6 years.

Among the first group, CBO estimates that 1.3 percent of the aliens would receive an average annual cash GA benefit of $1,850 in 1989. This estimate is based on current recipiency rates and benefit levels in GA programs. Among the second group, CBO's estimate for families who would have qualified for AFDC is based on the assumption that 52 percent of the aliens given permanent resident status would be married men and women, reflecting demographic data on unauthorized aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. The average annual cash benefit for these alien families is estimated to be $2,300 in 1989. The CBO estimate for aliens who would have qualified for SSI is based on a recipiency rate of 0.90 percent of the alien population for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, and assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the U.S. population. Their average annual cash benefit is estimated to be $1,850 in 1989.

These aliens would also receive medical GA. Their average annual medical benefits are estimated to be $940 in 1989.

Grants for imprisonment costs are based on an estimated 5,000 unauthorized aliens in State prisons. The prison costs per alien are estimated to be $14,000 annually.

Revenues. The bill would require the Attorney General to collect a fee of at least $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions in title II. The funds received from these application fees would be deposited into a separate account to be made available to cover only administrative expenses incurred in connection with the review of applications filed under this section. CBO estimates that approximately 700,000 aliens would apply for legal temporary residency in fiscal year 1989. Assuming a fee of $100 per application, the lower limit specified in the bill, CBO estimates that the Government would receive approximately $70 million in fiscal year 1989 from legalization application fees. Applications for permanent residency resulting in additional fees would occur beyond the estimating period in fiscal years 1991 and 1992. More money could be collected as a result of this provision if the Attorney General imposed a fee of more than $100 per application.

In addition, the bill allows the Attorney General to impose a fee on employers participating in the agricultural labor transition program to recover reasonable costs of processing registrations. If this fee were imposed, it would increase revenues by $10 million to $20 million in fiscal years 1987 and 1988. The bill also allows the Secre-

tary of Labor to imposed a fee on employers importing temporary agricultural workers to recover the costs of processing applications for certification. It has not yet been determined whether the Secretary of Labor would impose such a fee and CBO is unable at this time to estimate how much money would be collected as a result of this fee.

Part B of title I increases penalties for immigration-related violations and part C outlines employer penalties for illegal employment of unauthorized aliens. No estimate can be made of the fines that would be collected by the Federal Government as a result of these sections.

In addition to the above effects on Federal revenues, there are potential effects on individual income tax revenues and social insurance contributions. Revenues would increase if some of the aliens who are not having taxes withheld from their wages at present were to have taxes withheld as a result of this legislation. Revenues would decrease if aliens who currently have taxes withheld and are entitled to refunds that they do not claim would claim refunds as a result of this bill. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on these revenue sources.

6. Estimated cost to State and local governments: By legalizing certain unauthorized aliens currently residing in the United States, this bill could have sizable effects on State and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially- or fully-funded by States and localities. When legalized, these aliens would be eligible for such programs—immediately in the case of State programs and after 6 years in the case of programs financed by Federal and State governments jointly. Based on the CBO estimates, there would be no measurable effect on State and local budgets until 1989, when legalization would begin. In 1989 through 1992, States are estimated to save $70 million a year; the grants to States authorized by the bill are estimated to cover all of the States' additional public assistance costs, as well as their existing costs—$70 million a year—for imprisonment of illegal aliens. Beyond 1992, when the grants would no longer be available, States and localities would have higher expenditures in their public assistance programs, particularly until 1995 when the aliens would first become eligible for Federal programs based on financial need; CBO estimates these increased expenditures to be $225 million to $250 million a year.

A number of factors make these estimates uncertain. For purposes of this estimate, it is assumed that funds for the grants to States would be appropriated in full, or at least at a level that would cover fully State and local public assistance costs generated by the bill. If less than this amount were appropriated, States and localities would be faced with higher expenditures. Also, States and localities might have added costs if the public assistance expenditures generated by the bill were more than the $600 million limit on grants; this appears unlikely, but given the uncertainty surrounding the estimates, it is still a possibility. On the other hand, with a full appropriation, savings to States and localities would be higher than CBO has estimated. Certain current expenditures by

States and localities would be covered under the grant: free health care provided to unauthorized aliens in public hospitals, assistance to Cuban and Haitian entrants, and any public assistance being received illegally by unauthorized aliens. However, CBO does not have sufficient information to estimate these potential savings.

In addition, other titles of the bill could affect State and local budgets. If the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the United States are effective, there would be some associated savings to State and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the United States and the potential effectiveness of the bill's sanction provisions. It is also unknown to what extent State and local government budgets might be affected by any involvement of States and localities in the legalization application process, as provided for in title II.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Janice Peskin, Debra Goldberg, Neil Fisher, Paul Cullinan, Richard Hendrix, and Anne Manley.

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VII. REGULATORY IMPACT EVALUATION

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impacts that will result from the enactment of S. 1200 arise from certain requirements of sec. 101(a) of the bill, namely certain mandatory procedures for the verification of employment eligibility and recordkeeping in connection therewith. The impact of these requirements is discussed in the first section of part D of the General Statement, and in the portion of the Section-by-Section Analysis which describes sec. 101(a) of the bill. Any further discussion of such impacts would be impracticable, and, therefore, is omitted in accordance with clause (2) of such subsection (b), since details of the required forms and procedures will be developed only after enactment, by regulations of the Department of Justice and other executive agencies.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 1200 are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE ANNOTATED

* * * * * * *

Title 8—Aliens and Nationality

* * * * * * *

CHAPTER 12.—IMMIGRATION AND NATIONALITY

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
1101. Definitions.

* * * * * * *

SUBCHAPTER II.—IMMIGRATION

PART I.—SELECTION SYSTEM

* * * * * * *

1152. Numerical limitations on individual foreign states.
(a) Prohibition against preference or priority because of race, sex, nationality, place of birth, or place of residence.
(b) Determination of individual foreign states by Secretary of State; charging immigrant to proper foreign state.
(c) Immigrants born in colonies of foreign states.
(d) Changes in territorial limits of foreign states.
(e) Additional visas and conditional entries; availability and allocation.

* * * * * * *

PART II.—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

1184. Admission of nonimmigrants.
(a) Regulations.
(b) Presumption of status; written waiver.
(c) Petition of importing employer.
(d) Issuance of visa to fiancée or fiancé of citizen.

* * * * * * *

PART V.—DEPORTATION; ADJUSTMENT OF STATUS

* * * * * * *

1255. Adjustment of status of nonimmigrant to that of person admitted to permanent residence; record; natives of contiguous country or adjacent island.

* * * * * * *

1258. Change of nonimmigrant classification.

* * * * * * *

PART VIII.—GENERAL PENALTY PROVISIONS

* * * * * * *

1324. Bringing in and harboring certain aliens; persons liable; authority to arrest.

* * * * * * *

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1101. Definitions.

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States to perform temporary services or labor, *other than agricultural services described in section 216(h)(1)* if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him[.];

(N) an alien, having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily

to the United States under section 216 to perform agricultural services (as defined in section 216(h)(1)) of the temporary or seasonal nature; or

(O)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv).

* * * * * * *

(27) The term "special immigrant" means—

* * * * * * *

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment; [or]

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry[.]; *or*

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(O), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(O), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application

for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.

* * * * * * *

SUBCHAPTER II.—IMMIGRATION

PART I.—SELECTION SYSTEM

* * * * * * *

§ 1152. Numerical limitations on individual foreign states

* * * * * * *

(c) Immigrants born in colonies of foreign states

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a) of this section, to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed [six hundred] *3,000* in any one fiscal year.

* * * * * * *

(e) Additional visas and conditional entries; availability and allocation

Whenever the maximum number of visas have been made available under this section to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or [600] *3,000* in the case of a dependent area, shall be made available and allocated as follows:

(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

* * * * * * *

PART II.—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

§ 1184. Admission of nonimmigrants

(a) Regulations

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. *No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.*

* * * * * * *

(c) Petition of importing employer

The question of importing any alien as a nonimmigrant under section 1101(a)(15) (H) [or (L)], *(L), or (N)* of this title in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. *For purposes of this subsection the term 'appropriate agencies of Government' means the Department of Labor and includes, with respect to nonimmigrants under section 101(a)(15)(N), the Department of Agriculture. The provisions of section 216 shall apply to the*

question of importing any alien as a nonimmigrant under section 101(a)(15)(N).

* * * * * * *

PART V.—DEPORTATION; ADJUSTMENT OF STATUS

* * * * * * *

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence; record; alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

* * * * * * *

[(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; or (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title.]

c ALIENS FOR WHOM THIS SECTION DOES NOT APPLY.—Subsection (a) shall not apply to the following aliens:

(1) An alien crewman.

(2)(A) Except as provided in subparagraph (B), an alien who—

(i) continues in or accepts unauthorized employment before the date of filing an application for adjustment of status,

(ii) is not in legal immigration status on the date of filing the application for adjustment of status, or

(iii) has failed to maintain continuously a legal status since the date of entry into the United States.

(B) Subparagraph (A) shall not apply to an alien who is—

(i) an immediate relative, described in section 201(b), or

(ii) a special immigrant described in section 101(a)(27)(H).

(3) An alien admitted in transit without a visa under section 212(d)(4)(C).

(4) An alien (other than an immediate relative specified in section 201(b)) who entered the Untied States classified as a nonimmigrant under section 101(a)(15)(N).

(5) An alien (other than an immediate relative specified in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.

* * * * * * *

§ 1258. Change of nonimmigrant classification

The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), [or (K)] *(K), or (N)* of section 1101(a)(15) of this title.

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who came to the United States or acquired such classification in order to receive graduate medical education or training, [and]

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) of this title and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section[.], *and*

(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.

* * * * * * *

PART VIII.—GENERAL PENALTY PROVISIONS

* * * * * * *

§ 1324. Bringing in and harboring certain aliens; persons liable; authority to arrest

[(a) Persons liable

[Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

[(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

[(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

[(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

[(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any

violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.]

(a) Criminal penalties

(1) Any person who—

(A) knowing or in reckless disregard of the fact that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

(D) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,

shall be fined, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this subsection occurs. For the purpose of subparagraph (C) of this paragraph, employment (including the usual and normal practices incident to employment) by itself does not constitute harboring.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved—

(A) be fined, or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain,

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

(iv) an offense during which either the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act or conduct in-

tended to mislead any officer, agent, or employer of the United States,

be fined, or imprisoned not more than five years, or both.

(b) Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions

(1) Any conveyance, including any vessel, vehicle, or aircraft, which [is used] *has been or is being used* in the commission of a violation of subsection (a) of this section shall be [subject to seizure and] *seized and subject to* forfeiture, except that—

* * * * * * *

(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been *or is being* used in a violation of subsection (a) of this section and circumstances exist where a warrant is not constitutionally required.

(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of [conveyances] *property* under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may—

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court cost; [or]

(C) require that the General Services Administration, *or the Federal Maritime Commission if appropriate under section 203(i) of the Federal Property and Administrative Services Act of 1949,* take custody of the conveyance and remove it for disposition in accordance with law[.]*; or*

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant[: *Provided,* That], *except that* probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation [was not lawfully

entitled to enter, or reside within, the United States.] *had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.*

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien [was not lawfully entitled to, enter, or reside within, the United States.] *had not received prior official authorization to come to enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.*

(B) Official records of the Service *or of the Department of State* showing that the alien was not lawfully entitled to enter, or reside within, the United States.

* * * * * * *

Title 18—Crimes and Criminal Procedure

PART I—CRIMES

CHAPTER 75—PASSPORTS AND VISAS

Sec.

1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
[1546. Fraud and misuse of visas, permits, and other entry documents.]
1546. Fraud and misuse of visas, permits, and other documents.

* * * * * * *

§ 1546. [Fraud and misuse of visas, permits, and other entry documents] *Fraud and misuse of visas, permits, and other documents*

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, [or other document required for entry into the United States,] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or authorized employment in the United States,* or utters, uses, attempts to use, posseses, obtains, accepts, or receives any such visa, permit, [or document,] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or authorized employment in the United States,* knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or

possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) Whoever uses—

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined, or imprisoned not more than two years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).

* * * * * * *

Public Law 97-470 [H.R. 7102]; January 14, 1983

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Purpose.
Sec. 3. Definitions.
Sec. 4. Application of Act.

TITLE I—FARM LABOR CONTRACTORS

Sec. 101. Certificate of registration required.
Sec. 102. Issuance of certificate of registration.
Sec. 103. Registration determinations.
Sec. 104. Transfer or assignment; expiration; renewal.
Sec. 105. Notice of address change; amendment of certificate of registration.
[Sec. 106. Prohibition against employing illegal aliens.]

* * * * * * *

TITLE V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

Sec. 501. Criminal sanctions.
Sec. 502. Judicial enforcement.
Sec. 503. Administrative sanctions.
Sec. 504. Private right of action.
Sec. 505. Discrimination prohibited.
Sec. 506. Waiver of rights.

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act—

* * * * * * *

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(B) The term "migrant agricultural worker" does not include—

(i) any immediate family member of an agricultural employer or a farm labor contractor; or

(ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii)] *101(a)(15)(N)* and 214(c) of the Immigration and Nationality Act.

(9) The term "person" means any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence—

(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(B) The term "seasonal agricultural worker" does not include—

(i) any migrant agricultural worker;

(ii) any immediate family member of an agricultural employer or a farm labor contractor; or

(iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii)] *101(a)(15)(N)* and 214(c) of the Immigration and Nationality Act.

* * * * * * *

TITLE I—FARM LABOR CONTRACTORS

* * * * * * *

REGISTRATION DETERMINATIONS

SEC. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this Act or any regulation under this Act;

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this Act or any regulation under this Act or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this Act or any regulation under this Act or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

[or]

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally[.]; *or*

(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.

* * * * * * *

[PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

[SEC. 106. (a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

[(b) A farm labor contractor shall be considered to have complied with subsection (a) if the farm labor contractor demonstrates that the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor had no reason to believe the individual was an alien referred to in subsection (a).]

* * * * * * *

TITLE V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

CRIMINAL SANCTIONS

SEC. 501. (a) Any person who willfully and knowingly violates this Act or any regulation under this Act shall be fined not more than $1,000 or sentenced to prison for a term not to exceed one year, or both. Upon conviction for any subsequent violation of this Act or any regulation under this Act, the defendant shall be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

(b) If a farm labor contractor who commits a violation of [section 106] *paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act* has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the contractor shall, upon conviction, be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

* * * * * * *

IMMIGRATION AND NATIONALITY ACT

PUBLIC LAW 414

June 27, 1952, c. 477, 66 Stat. 163

TABLE OF CONTENTS

TITLE I—GENERAL

Sec.
101. Definitions.
102. Applicability of title II to certain nonimmigrants.
103. Powers and duties of the Attorney General and the Commissioner.
104. Powers and duties of the Secretary of State; Bureau of Security and Consular Affairs.
105. Liaison with internal security officers.

TITLE II—IMMIGRATION

CHAPTER 1—QUOTA SYSTEM

201. Numerical limitations; annual quota based upon national origin; minimum quotas.
202. Determination of quota to which an immigrant is chargeable.
203. Allocation of immigrant visas within quotas.
204. Procedure for granting immigrant status under section 101(a)(27)(F)(i) or 203(a)(1)(A).
205. Procedure for granting nonquota status or preference by reason of relationship.
206. Revocation of approval of petitions.
207. Unused quota immigrant visas.

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

211. Documentary requirements.
212. General classes of aliens ineligible to receive visas and excluded from admission.
213. Admission of aliens on giving bond or cash deposit.
214. Admission of nonimmigrants.
215. Travel control of aliens and citizens in time of war or national emergency.
216. Admission of temporary agricultural workers.
217. Visa waiver pilot program for certain visitors.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

271. Prevention of unauthorized landing of aliens.
272. Bringing in alien subject to disability or afflicted with disease.
273. Unlawful bringing of aliens into United States.
274. Bringing in and harboring certain aliens.
274A. Unlawful employment of aliens.

* * * * * * *

CHAPTER 9—MISCELLANEOUS

281. [Schedule of fees.] *Nonimmigrant visa fees and alien user fees.*

* * * * * * *

TITLE IV—MISCELLANEOUS

404. Authorization of appropriations.

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

TRAVEL CONTROL OF ALIENS AND CITIZENS IN TIME OF WAR OR NATIONAL EMERGENCY

SEC. 215. (a) When the United States is at war or during the existence of any national emergency proclaimed by the President, or, as to aliens, whenever there exists a state of war between or among two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this section be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation there-

of, it shall, until otherwise ordered by the President or the Congress, be unlawful—

* * * * * * *

(g) Passports, visas, reentry permits, and other documents required for entry under this Act may be considered as permits to enter for the purposes of this section.

ADMISSION OF TEMPORARY AGRICULTURAL WORKERS

SEC. 216. (a) APPLICATION FOR LABOR CERTIFICATION.—

(1) REQUIREMENT.—A petition to import an alien as a temporary agricultural worker (as defined in subsection (h)(3)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient eligible individuals who are able, willing, and qualified and who will be available at the time and place needed to perform the services involved in the petition, and

(B) the employment of the alien in such services will not adversely affect the wages and working conditions of eligible individuals in the United States similarly employed.

(2) PAYMENT OF REQUIRED FEES.—The Secretary of Labor may require by regulation, as a condition of applying for the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions exist:

(1) LABOR DISPUTE.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2) VIOLATION OF TERM OF PREVIOUS CERTIFICATION.—

(A) IN GENERAL.—The employer at any time during the previous two-year period employed temporary agricultural workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

(i) substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers, or

(ii) has not paid every penalty which has been assessed by the Secretary of Labor for a violation of a term or condition of such labor certification.

(B) DISQUALIFICATION LIMITED TO ONE YEAR.—No employer may be denied certification under subparagraph (A) for more than one year for any violation described in that subparagraph.

(3) NOT PROVIDING FOR WORKERS' COMPENSATION.—The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the

worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(c) RULES CONCERNING APPLICATIONS FOR LABOR CERTIFICATION.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification for a temporary agricultural worker:

(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 65 days before the first date the employer requires the services of the worker.

(2) NOTICE WITHIN 14 DAYS OF DEFICIENCIES.—

(A) NOTICE OF DEFICIENCIES.—The application shall be considered to have met the requirements of subsection (a)(1) (other than subparagraph (A) thereof) unless the Secretary of Labor, within 14 days of the date of filing the application, notifies the employer filing the application that the application does not meet the requirements.

(B) SUBMITTAL OF MODIFIED APPLICATION.—If the application does not meet the requirements, the notice shall include the reasons therefor and the Secretary shall permit the employer an opportunity for the prompt resubmission of a modified application.

(3) ISSUANCE OF CERTIFICATION.—

(A) IF CONDITIONS MET.—The Secretary of Labor shall make, not later than 20 days before the date such services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the requirements for certification (including the recruitment of eligible individuals as prescribed by regulation), and

(ii) the employer does not actually have, or has not been provided with referrals of, eligible individuals who have agreed to perform such services on the terms and conditions of a job offer which meet requirements of regulations.

(B) CONTINUED ACCEPTANCE OF APPLICANTS.—A labor certification under this section remains effective only if the employer continues to accept for employment, until the date the temporary agricultural workers depart for work with the employer, eligible individuals who apply or are referred to the employer.

(4) PROVIDING HOUSING ALLOWANCE.—In the employer's complying with terms and conditions of employment respecting the furnishing of housing, the employer shall be permitted, at the employer's option and instead of providing for suitable housing accommodations, to substitute payment of a reasonable housing allowance, but only if suitable housing is otherwise available in the proximate area of employment.

(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such

a worker, may be filed by an association representing agricultural producers which use agricultural services.

(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If such an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its member producers to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) TREATMENT OF VIOLATIONS.—

(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of such an association is determined to have committed an act that under subsection (b)(2) results in the denial of certifications with respect to the member, the denial shall apply only to that member and does not apply to the association or another producer member of the association unless the Secretary determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—If an association representing agricultural producers as a joint employer, or employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, or had knowledge of and derived benefit from, the violation.

(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—

(1) DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or, at the applicant's request, for a de novo administrative hearing respecting the denial. In the case of a request for such a review or hearing with respect to denial of certification for temporary agricultural workers to perform agricultural services in the production of perishable commodities (as defined by the Secretary of Agriculture for purposes of this section), the Secretary of Labor shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

(2) REDETERMINATION WHERE UNQUALIFIED WORKERS REFERRED FOR EMPLOYMENT.—The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of a temporary agricultural worker if the employer asserts that eligible individuals who have been referred are not able, willing, or qualified because of lawful employment-related reasons. If the employer asserts that an eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employ-

er to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(3) ATTORNEY GENERAL EXPEDITED REVIEW WHERE WORKERS NOT ACTUALLY AVAILABLE.—To the extent that—

(A) a certification under subsection (a)(1) was denied solely because of the availability of eligible individuals to perform the agricultural services specified in the petition, and

(B) eligible individuals who agree to perform the services for which the temporary agricultural workers are sought are not actually available at the time and place such services are required,

the Attorney General shall provide by regulation for an expedited review of the petition respecting the workers not later than 72 hours after the time the employer requests expedited review under this paragraph. To the extent that the Attorney General determines that the facts described in the previous sentence exist, the Attorney General may provide for approval of the petition (subject to the other conditions required for the approval of certification under subsection (a)(1)), notwithstanding the denial of the certification by the Secretary of Labor.

(4) EXPEDITED APPLICATION WHERE UNFORESEEN NEED FOR WORKERS.—

(A) PERMITTING AMENDED APPLICATION OR ABBREVIATED RECRUITMENT PERIOD.—If the Secretary of Labor makes the determination described in subparagraph (C), the Secretary—

(i) shall permit the employer to amend or to make an application for certification under subsection (a)(1), and

(ii) may waive some or all of the 65-day recruitment period described in subsection (c)(1) as necessary to meet the critical need described in subparagraph (C)(i).

(B) PROMPT REDETERMINATION.—In the case of an amended or new application under subparagraph (A)—

(i) USING BEST DATA.—The Secretary shall make the determination on the amendment or application based upon the best available labor market information.

(ii) DEADLINE FOR DETERMINATION.—Except as provided in clause (iii), the Secretary shall make the determination on the amendment or application not later than 20 days before the date on which the workers are needed.

(iii) DEADLINE FOR LATE AMENDMENTS AND APPLICATIONS.—If an amendment or application is made at any time later than 3 days before such date of need described in clause (ii), the Secretary shall make the determination on the amendment or application within 72 hours after the date the amendment or application is submitted.

(C) DETERMINATION OF UNFORESEEN CIRCUMSTANCES.—The determination under subparagraph (A) is that—

(i) in the case of an employer that has filed an application for a certification under subsection (a)(1), the employer—

(I) has a critical need for workers before the expiration of the 65-day period described in subsection (c)(1), or

(II) has a critical need for additional workers who had not been requested in the previous application;

(ii) in the case of an employer that had not previously filed such an application, the employer has a critical need for workers before the expiration of the 65-day period described in subsection (c)(1) and the employer made prompt application for certification under subsection (a)(1) when the employer's need for workers became known; and

(iii) based on the employer's past experience and on reasonable expectations, the need for such workers at the time required could not have been foreseen.

(5) PERMITTING PRESENTATION OF COUNTERVAILING EVIDENCE.—If the Secretary of Labor denies a certification under subsection (a)(1) or fails to act on the application, the Attorney General may permit the applicant to present countervailing evidence to the Attorney General that—

(A) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the services involved in the petition for which the certification is sought, and

(B) the employment policies of the Department of Labor have been observed.

(f) ENTRY AND TRANSFER OF TEMPORARY AGRICULTURAL WORKERS.—

(1) TIME LIMITATION.—An alien may not be admitted to the United States as a temporary agricultural worker for an aggregate period longer than the period (or periods) determined by regulations of the Attorney General. The regulations may provide for a period of admission of longer than one year in the case of agricultural services which the Secretary of Labor has recognized, for purposes of the admission of certain nonimmigrants under section 101(a)(15)(H)(ii), before the date of the enactment of this section.

(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(3) TRANSFER OF WORKERS AMONG EMPLOYERS PERMITTED.—Nothing in this section shall prohibit an employer which has a petition approved with respect to the importation of temporary agricultural workers from hiring such a worker who has completed a work contract entered into with another employer. The Attorney General shall provide for a procedure to allow temporary agricultural workers, who have completed a work contract

under this section and who are not otherwise deportable, to remain in the United States for brief periods in which to seek and accept employment with employers who are authorized to employ the workers.

(g) MISCELLANEOUS PROVISIONS.—

(1) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of temporary agricultural workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

(3) PREEMPTION.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(4) TREATMENT FOR FICA, FUTA, AND SOCIAL SECURITY.—For the administration of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Social Security Act, a temporary agricultural worker shall be considered to be an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H)(ii) of this Act.

(h) DEFINITIONS.—For purposes of this section:

(1) AGRICULTURAL SERVICES.—The term "agricultural services" has the meaning given such term by the Secretary of Labor in regulations and includes—

(A) agricultural labor, defined in section 3121(g) of the Internal Revenue Code of 1954, and

(B) agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938.

(2) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(2)) with respect to that employment.

(3) TEMPORARY AGRICULTURAL WORKER.—The term "temporary agricultural worker" means a nonimmigrant described in section 101(a)(15)(N).

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the "pilot program" under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (de-

scribed in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c).

(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

(B) executes a waiver of review and appeal described in subsection (b)(4).

(4) ROUND-TRIP TICKET.—The alien has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

(A) is issued by a carrier which has entered into an agreement described in subsection (d), and

(B) guarantees transport of the alien out of the United States at the end of the alien's visit.

(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

(1) PRIOR NOTICE TO CONGRESS.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States on nonimmigrant visitors receiving a visa waiver under the pilot program.

(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(B) LOW IMMIGRANT VISA REFUSAL RATE FOR EACH OF 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year (within the pilot program period) after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of

nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term "initial period" means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

(d) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(A) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

(A) to idemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term "pilot program period" means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) * * *

* * * * * * *

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) HIRING, RECRUITING, OR REFERRING.—It is unlawful for a person or other entity to hire, or to recruit or refer for a fee or other consideration, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(2)) with respect to such employment.

(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) DEFENSES.—

(A) COMPLIANCE WITH EMPLOYMENT VERIFICATION SYSTEM.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1) with respect to such hiring, recruiting, or referral.

(B) PRESUMPTION FOR EMPLOYERS OF 4 OR MORE EMPLOYEES.—Except for purposes of subparagraph (2)(E) of subsection (d), if a person or entity is employing four or more employees and hires (or recruits or refers for a fee or other consideration) for employment in the United States an unauthorized alien, for purposes of paragraph (1) the person or entity shall be presumed to have known that the alien was an unauthorized alien unless the person or entity has complied with the requirements of subsection (b).

(C) PRESUMPTION FOR LARGE RECRUITERS OR REFERRERS.—If a person or entity recruits or refers for a fee or other consideration more than four individuals in any 12-month period and recuits or refers for a fee or other consideration for employment in the United States an unauthorized alien, for purposes of paragraph (1) the person or entity shall be considered to have known that the alien was an unauthorized alien unless the person or entity has complied with the requirements of subsection (b).

(D) REBUTTAL OF PRESUMPTION.—The presumption established by subparagraph (B) or (C) may be rebutted through the presentation of clear and convincing evidence which contradicts the presumption.

(4) VIOLATORS SUBJECT TO ORDER.—A person or entity that violates paragraph (1) or (2) is subject to an order under subsection (d).

(b) EMPLOYMENT VERIFICATION SYSTEM.—Except as provided in subsection (c), the requirements referred to in subsections (a)(3) and (d)(2)(C)(i) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following four paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine.

(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

(i) United States passport;

(ii) certificate of United States citizenship;

(iii) certificate of naturalization;

(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or

(v) resident alien card or other alien registration card, if the card—

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

(II) is evidence of authorization of employment in the United States.

(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee or other consideration (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated.

whichever is later.

(4) UNIFORM VERIFICATION POLICY.—The person or entity must apply the requirements of the previous three paragraphs uniformly to all individuals hired (or recruited or referred for a fee or other consideration).

(5) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(6) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(c) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitabil-

ity of existing Federal and State identification systems for use for this purpose.

(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Except as provided in subparagraph (C), such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(C) REQUIRING USE OF COUNTERFEIT-RESISTANT SOCIAL SECURITY CARDS.—The President may require, without regard to paragraph (2), that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Except as provided in paragraph (1)(C), any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

(i) 60 days, or

(ii) in the case of a major change described in subparagraph (D), two years,

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) MAJOR CHANGES REQUIRING TWO YEARS NOTICE AND CONGRESSIONAL REVIEW.—As used in this paragraph, the term "major change" means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, or

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official

transmits to the person, and the person must record, a verification code;

but does not include a change in any card used for accounting purposes under the Social Security Act.

(4) DEMONSTRATION PROJECTS.—

(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than three years.

(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(d) COMPLIANCE.—

(1) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) under this subsection.

(2) ORDER FOR VIOLATIONS.—

(A) IN GENERAL.—If, after notice and opportunity to request a hearing respecting a violation of subsection (a), the immigration judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a), the judge shall state his findings of fact and issue and cause to be served on such person or entity an order.

(B) CIVIL PENALTY AS PART OF ORDER.—An order under subparagraph (A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $100 and not more than $2,000 for each unauthorized alien with respect to whom a violation of subsection (a) occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to an order under this subsection, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity which has engaged or is engaging in a pattern or practice of such violations.

(C) ADDITIONAL REMEDIES AS PART OF ORDER.—An order under subparagraph (A) may require the person or entity—

(i) to comply with the requirements of subsection (b) (or subsection (c) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee or other consideration) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

(D) DISMISSAL OF COMPLAINTS.—If upon the preponderance of the evidence taken, the judge is of the opinion that the person or entity named in the complaint has not violated subsection (a), the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(E) CRIMINAL PENALTY.—Any person or entity which, after having been previously required to pay a civil penalty under subparagraph (B)(iii) for a pattern or practice of violations of subsection (a), again engages in such a pattern or practice shall be fined not more than $3,000 for each unauthorized alien with respect to whom a violation of subsection (a) occurred, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(3) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

(A) immigration officers and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) immigration judges, by subpoena, may compel the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attoney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(4) TREATMENT OF CERTAIN SUBDIVISIONS.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General may provide for the administrative appellate review of the determination of an immigration judge under this subsection by an appropriate administrative appellate body.

(e) JUDICIAL REVIEW OF ORDERS.—Judicial review of orders under this subsection shall be exclusively under the procedures provided in chapter 158 of title 28, United States Code, except as follows:

(1) FILING DEADLINE.—Petitions for review may be filed not later than 45 days after the date of the final order.

(2) VENUE.—The venue of any petition for review under this subsection shall be in the judicial circuit in which the administrative proceedings before an immigration judge were conducted in whole or in part, or in the judicial circuit wherein is the residence of the petitioner, but not in more than one circuit.

(3) SERVICE.—In the case of review sought by an entity other than the Service, the action shall be brought against the Immi-

gration and Naturalization Service as respondent and service of the petition to review shall be made upon the Attorney General and upon the official of the Service in charge of the Service district in which the office of the clerk of the court is located.

(4) SUBSTANTIAL EVIDENCE.—The petition shall be determined solely upon the administrative record upon which the order is based and the immigration judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) TYPEWRITTEN BRIEFS.—It shall not be necessary to print the record or any part thereof, or the brief, and the court shall review the proceedings on a typewritten record and on typewritten briefs.

In any judicial review of an immigration judge's order under this subsection, the court may provide for such order of enforcement as may be appropriate. Section 279 shall not apply to causes arising under this section.

(f) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under subsection (d) against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order imposing the assessment shall not be subject to review.

(g) MISCELLANEOUS PROVISIONS.—

(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee or other consideration for employment, unauthorized aliens.

(h) DEFINITIONS.—As used in this section—

(1) IMMIGRATION JUDGE.—The term "immigration judge" means an immigration officer specially designated to hear cases under this section.

(2) UNAUTHORIZED ALIEN.—The term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

* * * * * * *

CHAPTER 9—MISCELLANEOUS

[*SCHEDULE OF FEES*] *NONIMMIGRANT VISA FEES AND ALIEN USER FEES*

SEC. 281. [The following fees shall be charged:] *(a) NONIMMIGRANT VISA FEES.—*

(1) For the furnishing and verification of each application for an immigrant visa (which shall include the furnishing and verification of the duplicate), $5;

(2) For the issuance of each immigrant visa, $20;

(3) For the issuance or each extension of a reentry permit, $10;

(4) For the filing of each application for adjustment of status under sections 245 and 248, for the creation of a record of admission for permanent residence under section 249, or for suspension of deportation, $25;

(5) For the issuance of each extension of stay to nonimmigrants, other than nonimmigrants described in section 101(a)(15)(F) and, upon a basis of reciprocity, the nonimmigrants described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v), $10;

(6) For filing with the Attorney General of each petition under sections 204(b), 205(b), and 214(c), $10; and

(7) For approval of each application for, including issuance of each certificate of, admission to practice as attorney or representative before the service, pursuant to such regulations as may be prescribed by the Attorney General, $25.

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State in amounts corresponding, as nearly as practicable, to the total of all similar visa, entry, residence, or other fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided,* That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

(b) ALIEN USER FEES.—The Attorney General, in consultation with the Secretary of State, may impose fees on aliens with respect to their use of border facilities or services of the Service in such amounts as may reasonably reflect the portion of costs of maintenance and operation of such facilities and provision of such services attributable to aliens' use of such facilities and services.

* * * * * * *

TITLE IV—MISCELLANEOUS

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 404. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. (a) There are authorized to be appropriated to the Department of Justice for the Immigration and Naturalization Service—

(1) for fiscal year 1987, $840,000,000, and

(2) for fiscal year 1988, $830,000,000.

(b) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—(1) There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary services which might otherwise be performed by temporary agricultural workers described in section 216, and

(B) of monitoring terms and conditions under which such temporary agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

(2) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under section 216 and under section 212(a)(14).

(c) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 216.

(d) Nothing in this bill is intended to authorize funding for fiscal year 1986.

MINORITY VIEWS OF MR. KENNEDY

I have voted against this bill in the Committee—as I did during the two previous Congresses—because I continue to have serious reservations about this legislation in its current form. During the Committee's consideration of the bill I offered a number of amendments to address these issues, and I intend to do so again when the bill reaches the Senate floor.

However, at the outset, I want to acknowledge once again my deep respect for the chairman of our subcommittee, Senator Simpson, and for his efforts to deal with the important issue of immigration reform. Although we have occasionally differed in our approach to this difficult and complex issue, I have always admired his sincerity and thoughtfulness since we served together 6 years ago as members of the Select Commission on Immigration and Refugee Policy. Since then there has been a great deal of debate on this issue, and on the recommendations of the Select Commission—often generating more heat than light—but throughout he has shown a willingness to hear all sides and consider all views.

This year's bill represents, in several respects, both a step forward, but also a step backward.

For example, I welcome the elimination of the drastic changes in the existing immigration preference system that was contained in last year's bill. I share the view that it is far better to deal with the reform of our current legal immigration system in a bill separate from one focused only on illegal migration, as the pending legislation is.

Legalization Program

However, I believe the current bill has taken an unnecessary and regrettable step backwards in its retreat on authorizing a legalization program in concert with the enactment of employer sanctions and new enforcement strategies.

Twice the U.S. Senate has voted—by substantial margins—in support of a clear-cut and unequivocal legalization program. The House of Representatives has also voted for an even more generous amnesty. And last October the Conference Committee supported an equally generous and flexible legalization program. Why should we abandon these votes in support of such a humane program?

A legalization program was one of the fundamental recommendations of the Select Commission—unanimous, in fact—and was seen by all as an integral part of our reform and enforcement effort. In fact, it was seen as an essential corollary to the new enforcement provisions recommended by the Commission and embodied in the current bill. It still is.

Employer Sanctions

A fundamental concern I have about this bill is that it must not become a vehicle for discriminatory actions against Hispanic Americans and other minority groups. Immigrants and undocumented aliens must not become scapegoats for the serious problems our country faces today. We must be extremely cautious to avoid legislative action that raises the level of intolerance and discrimination in our society. The employer sanctions provisions in this bill present this danger, and I regret that the Committee did not accept an amendment that addresses this issue.

I have in the past supported legal sanctions against employers who knowingly hire undocumented aliens. I have done so as a matter of principle; it is wrong that the sanctions under current law fall solely on the undocumented aliens, not on employers who may be exploiting them. The Government needs stronger enforcement tools to deal with the serious problem of employers who engage in a pattern and practice of hiring and exploiting undocumented aliens.

However, throughout the Select Commission's work as well as during the extensive hearings of the subcommittee over the past 4 years, two central objections were raised again and again:

(1) That the proposed employer sanctions might result in discrimination against certain American workers, especially Hispanics and Asians; and

(2) That employers would be unnecessarily burdened with paperwork in implementing the sanctions.

The history of immigration legislation in recent decades is that once an immigration law is enacted, Congress does not act again for many years. To assure that Congress will not ignore any discrimination that arises in the implementation of employer sanctions, I offered an amendment to provide the following safeguards:

(1) To insure that a fair and impartial study of the sanctions program is available to Congress, I felt the General Accounting Office should be explicitly required in the statute to undertake an independent study on their implementation.

(2) The employer sactions should be "sunsetted" after 3 years, so that Congress will be obliged to face this issue of discrimination squarely, if it develops. If employer sanctions become a pretext for discrimination, then the authority for them should expire unless Congress enacts new legislations with additional protections. If no discrimination materializes, then under my amendment sanctions will be continued.

I regret the Committee did not accept this provision. If it is adopted, I believe minorities in our society will be given a pledge that, if a serious pattern of discrimination emerges, Congress will not ignore it. Given the significant changes proposed by this legislation, this is the minimum assurance we should be willing to provide.

Temporary Foreign Workers

One also must be alarmed over the weakening of the H-2, temporary foreign worker provisions contained in this bill. I continue to support the unanimous vote of the Select Commission in rejecting

the establishment of an expanded temporary foreign worker program. Adoption of the legalization program and implementation of the new immigration system will result in the legal admission of additional immigrants and an adjustment in the status of undocumented aliens already working here.

Until the impact of these changes is assessed, there is no valid justification for a large new temporary foreign worker program. Any such program would have serious consequences for American labor and American wages. We must reject calls for a new "bracero" program. We must be extremely cautious not to allow changes in the H-2 program to undermine labor standards or to depress wages. Employers seeking H-2 workers must be required to seek American workers first, and we should plan the elimination of this program in the future, not its expansion.

International Cooperation

Finally, although I am concerned over these specific provisions of this legislation, I remain even more concerned over the larger issue of the migration pressures our country will encounter in the decades ahead. I am concerned this legislation is moving forward in a kind of vacuum, and that we will be deluding ourselves if we think this legislation will really solve the many immigration problems our country—along with many others—faces today. At best this is a band-aid to a potential hemorrhage—a very tentative step in a long-term process.

Every day it becomes clearer that the complex migration problems, which are growing around the world, will require greater international action. Domestic laws and actions alone are no longer sufficient. Economic and developmental problems in neighboring countries—or even in countries far away—will have more impact upon migration to the United States than any combination of domestic laws or policies. And violence and conflict can produce a flow of people that only concerted international action can deal with.

There are no easy answers. But it is imperative that we understand that migration is an international issue, and not merely a domestic concern. It will require far greater international cooperation than we have undertaken to date—and that is why I supported in Committee Senator Simon's amendment forcing at least a brief review of these issues.

One of the most important recommendations of the 1981 Select Commission on Immigration and Refugee Policy was that the United States should become more actively involved in efforts to achieve international cooperation on world migration and refugee problems.

I continue to endorse the recommendation of the Commission that the United States should expand bilaterial consultations to promote cooperation on migration issues in the Western Hemisphere—especially with our neighbors, Mexico, and Canada. These two nations deserve special consideration in our policies, and I commend Senator Simpson for his personal efforts to meet with the leaders of Mexico during the development of this legislation.

Once again, I must note that this bill is moving forward without adequate consultations by the executive branch with our neighbors. If we are to achieve genuine cooperation, we must consult in advance, before changes in our immigration policies are set.

Unilateral policies, like fences, do not always make good neighbors. During our consideration of this legislation we must give greater weight to this concern, and the administration must give greater evidence that it, too, is pursuing it.

CONCLUSION

Although I continue to support efforts to achieve genuine immigration reform, I must oppose this legislation in its present form for all of the reasons I reviewed during the course of the Committee's markup of the bill. In its current form, it does not deserve the support of the Senate.

MINORITY VIEWS OF MR. SIMON

As the newest member of the Subcommittee on Immigration and Refugee Policy, I have much to learn in this complex area. I have been pleased to work with the chairman of the subcommittee, Senator Simpson, and have been privileged to learn at least a little about this Nation's immigration problems because of the patience and consideration he has afforded me as a new member.

This is not the first time this Committee and the full Senate have considered similar measures. Senator Simpson's tireless attempts to responsibly correct this Nation's immigration problems have earned the respect of his colleagues on both sides of the aisle.

I have voiced concern during hearings and consultations about the following issues:

LEGALIZATION

Legalization had been one of the fundamental components of most previous attempts to reform our immigration laws. Though some versions differed on application dates and procedural questions, it was clear that all legalization proposals were intended to be virtually concurrent with employer sanctions. This year's bill, however, moves away from this well-established precedent of concurrent employer sanctions and legalization. The Commissioner of the INS testified during hearings that his agency would be equipped to implement legalization concurrently with employer sanctions. Including a provision which would delay legalization for several million people and leave them in an exploitable and illegal status is not a desirable approach.

Lawrence Fuchs, former Executive Director of the Select Commission on Immigration and Refugee Policy, testified on June 17, 1985:

> . . . I became convinced that it (a delayed legalization program) is inherently a bad idea. Let us imagine a best case scenario. The bill passes and employer sanctions are instituted in January 1986 . . . Let us suppose that by January of 1988, a unanimous commission decides that the new enforcement measures are substantially effective, that the legalization program should begin in April 1988 and that for the next 12 months, a majority of the illegal aliens who have been in the U.S. more or less continuously since January 1, 1980 apply for temporary resident status, with the prospect of applying for immigrant status 30 months later. Under this best case, there would be a period of about two and one-half years between passage of the bill and the institution of the legalization program.

> During that time, long-time illegal aliens who intend to apply for legalization will be picked up by the INS, including some who are respected in their communities . . .
>
> The best case scenario is not a good one. And it does not take much imagination to portray a much less desirable scenario.

Under the bill as amended in the full Committee, an undocumented alien would have to reside in the United States continuously for 9 years to become eligible. This means that any absence from the United States, even for a family emergency, would disqualify a person.

The chairman has already spoken on many occasions about the exploitable underclass of undocumented aliens in this country today. It is evident that these are people who are productive members of society but who are unable, for example, to seek redress for crimes, who are fearful of reporting job-related abuse, and who have virtually nowhere to turn. They are forced to live a semiclandestine life. To eliminate this subclass within American society, we should be moving ahead with a concurrent legalization program. This bill falls short of that goal.

Temporary Foreign Workers

This year's provision creates a significantly expanded guestworker program with special consideration for growers of perishable crops.

Many members of this Committee remember a program which the United States maintained from 1946 to 1964. At its peak, the Bracero Program allowed nearly 500,000 Mexican guestworkers into this country to work primarily in agriculture.

In 1959, Secretary of Labor James Mitchell commissioned a report on the Bracero Program and found that the use of foreign workers had serious adverse effects on domestic agricultural workers.

> Studies of the Department of Labor have shown that wage rates paid to domestic workers by farmers who use Mexicans are generally lower than those paid by non-users for comparable work in the same area. This indicates that employers of foreign labor frequently do not make the same effort as other employers in competing for domestic farm workers. (Mexican Farm Labor Program Consultant's Report, Oct. 1959, US Department of Labor, James P. Mitchell, Secretary.)

The Bracero Program had other negative effects, as well. Abuse of guestworkers by employers was widespread and many were unable to effectively voice their complaints for fear of losing the opportunity to work the succeeding year.

The current bill would expand a foreign guestworker program to unpredictable levels. I supported Senator Kennedy's amendment to strike the H-2 provisions of the bill which would leave the law as it stands. According to the Department of Labor, over 90 percent of H-2 applications are approved. Moreover, the current H-2 program is available to an employer in any region of the country as long as

he or she can certify that: (a) unemployed workers cannot be found in this country, and (b) that foreign workers will not adversely affect the domestic wage rate. In expanding a guestworker program in the United States, we run the risk of repeating what we had in the Bracero Program.

United States-Mexico Relations

We will not be responsibly addressing this Nation's immigration problems by passing this bill or a dozen bills like it if none of them places attention on the importance of the economic condition of Mexico. I am pleased that my amendment to establish a 6-month Commission to look into this question was accepted.

There have been concerns raised that focusing the United States attention only on Mexico will prompt other countries to demand that they be given similar attention. There is no country which demonstrates the economic disparity between it and the United States as clearly as does Mexico. No other country shares a 2,000-mile border and which contributes to nearly 50 percent of this Nation's illegal immigration. Further, Mexico currently has a per capita income of $2,000 compared to $8,000 in the United States. Unemployment figures show an even greater gap.

The prospect of jobs will continue to draw people to this country unless some of these disparities can be corrected. The United States and Mexico must forge a much closer economic partnership, and all of us will benefit.

Discrimination

Another area which concerns me is the issue of discrimination. The chairman has spent many years attempting to construct an acceptable form of employer sanctions keeping in mind the concerns of Hispanic residents of this country and business interests.

There have been some valid concerns raised by several ethnic and religious groups. The problem of discrimination resulting from employer sanctions against "foreign-looking" or "foreign-sounding" individuals is a reality which no Member of Congress should ignore.

We do not know exactly how much discrimination will increase against Hispanics, Asians, and other ethnic groups. Nor do we know how this bill will affect the nearly 12 million lawfully admitted permanent residents, refugees, and asylees in this country. The law is currently unclear as to what protection is and is not afforded to legal aliens. I felt the need to clarify these questions in an additional hearing. An additional hearing on these issues would have been of value to me and the subcommittee. I hope that the Senate will be able to have access to a clear record on these issues before the bill reaches the Senate floor.

CONCLUSION

Chairman Simpson has courageously fought for a responsible revision of our immigration laws. While I disagree with some of the provisions in the Committee bill, I agree that we need to take action to solve what has become a pressing national problem: illegal immigration. I would like to be able to vote for a bill which deals with this problem fairly and responsibly. I hope it can be amended on the floor so that I can support the final product.

○